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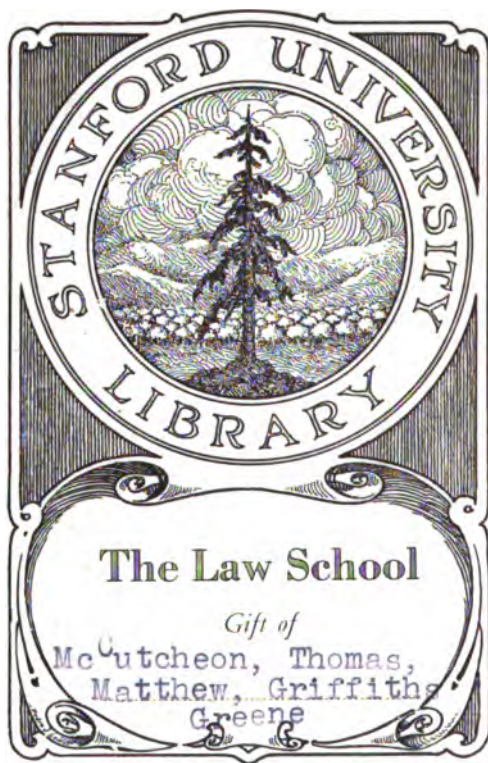
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# THE INHERITANCE TAX LAW

CONTAINING

ALL AMERICAN DECISIONS AND  
EXISTING STATUTES

BY

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## PREFACE.

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The subject of inheritance taxes is a branch of the law which is daily growing in importance, and it is so woven into the texture of our taxing systems that the principles now in force bid fair to be permanent. The legislation of 1911, with a few notable exceptions, was productive of no great changes, and we believe that the statutes and decisions in most of the states have so crystallized the law that an authoritative statement at this time is not out of place. The lapse of over fifteen years since the publication of the last general work on Inheritance Taxes seems to furnish ample reason for a new book at the present time, as during that period the statutes in all the states have substantially changed and most of them have been in force long enough to receive final construction by the courts.

It has been the authors' aim to make this book of practical importance to the banker and investor as well as to the lawyer, and with this in mind we have printed in the second part of this book all existing statutes, collated with judicial interpretation of those statutes.

To make clear the application of the early decisions without extended research, we have also printed all the earlier statutes referred to in reported cases. We have also prepared tables for ready use by investors, showing the law in each state at a glance and containing a list of the corporations whose stocks are listed on the stock exchanges, with the place of incorporation of each, which we believe should prove of incalculable value to the investor who desires so to place his funds as to insure his family against exorbitant or double taxation.

We have analyzed with great care all reported opinions and have quoted at length in the second part of the volume instructive discussions on disputed points by our leading courts. In short, we hope and believe that the investor and lawyer will find everything in this work which he may care to know about inheritance taxes in any State.

The inheritance tax of reasonable provisions has so many features to commend it that we believe it will prove a permanent feature of our tax systems, although we appreciate it is regarded by many as only fittingly described in the words of Macbeth: —

“The time has been  
That, when the brains were out, the man would die,  
And there an end; but now they rise again,  
With twenty mortal murders on their crowns,  
And push us from our stools.”

ARTHUR W. BLAKEMORE.  
HUGH BANCROFT.

Jan. 1, 1912.

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# THE INHERITANCE TAX LAW.

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## CHAPTER I.

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### DEFINITIONS.

- § 1. Death Duty.
- § 2. Inheritance Tax.
- § 3. Legacy Tax.
- § 4. Succession Tax.
- § 5. Legacy and Succession Tax Distinguished.
- § 6. Residence, Domicile, etc.

#### Sec. 1. Death Duty.

A death duty<sup>1</sup> is an exaction by the state to be collected from the property left by a deceased person while in its custody, prescribed upon the occasion of his death, and the consequent devolution of his property by force of its laws.<sup>2</sup>

<sup>1</sup>**Death Duties.** The comprehensive English term for a variety of specific duties levied under acts of Parliament on the estates of deceased persons. Included under the term are (1) probate duties, (2) account duties, (3) legacy duties, (4) succession duties, and (5) estate duties. — *International Encyclopedia*.

<sup>2</sup>*Appeal of Hopkins*, 77 Conn. 644, 649, 60 A. 657.

#### Sec. 2. Inheritance Tax.

The fact that a statute is called an inheritance tax is of much significance. No term sufficiently comprehensive could be more aptly employed to embrace a tax upon the right to acquire interests in both real and personal property passing by will or by inheritance, whether lineal or collateral, than the term "inheritance tax." By this term the legislature intended to express the specific nature of the tax and that it should operate upon interests to which a person succeeded upon death.<sup>1</sup>

The word "inheritance" is no doubt properly confined to property passing by descent or by operation of law. But by popular use this word has become applicable to cases of testacy and is broad

enough to sustain a provision imposing a tax on the right of succession by will.<sup>2</sup>

<sup>1</sup> *In re Macky*, 45 Colo. 316, 102 P. 1075. See *In re Morris*, 138 N. C. 259, 50 S. E. 682.

<sup>2</sup> *In re White*, 42 Wash. 360, 84 P. 831.

Under the Tennessee Statute of 1909, c. 479, sec. 20, providing for the taxation of "inheritances," it was claimed that the word "inheritances" is to be limited to cases of intestacy. The court observes that if this was so the statute might be void, as class legislation; and that the revenue statutes should receive a "fair construction to effect the end for which they were intended." The court notes that the civil law definition of the word "inheritances" is "the succession to all rights of the deceased"; and is of two kinds, by will and by the operation of law. The court concludes that it is inconceivable that the legislature intended by the term inheritance to confine this tax to those taking as heirs or next of kin. *Knox v. Emerson*, 123 Tenn. 409, 131 S. W. 972.

See "Smith's Wealth of Nations," Book 5, c. 2.

### Sec. 3. Legacy Tax.

A tax upon an interest in personal property on the death of another is a legacy tax.

*In re Macky*, 45 Colo. 316, 102 P. 1075.

### Sec. 4. Succession Tax.

The term "succession tax" is of the broadest significance. A tax upon an interest in real estate could be aptly termed a succession tax.

*In re Macky*, 45 Colo. 316, 102 P. 1075.

### Sec. 5. Legacy and Succession Tax Distinguished.

A legacy duty should be distinguished from a succession tax, as the former taxes a specific inheritance or bequest, while the latter taxes a transfer of property in general.

The New Jersey statute of 1894 differs from the New York act of 1892, which assumes to tax the transfer of property within the jurisdiction, and the New Jersey statute of 1894 does not undertake to tax all transfers of property within the jurisdiction, but only taxes an inheritance, distribution, bequest, or devise. In this respect the New Jersey statute differs also from the Maryland statute construed in *State v. Dalrymple*, 70 Md. 594, 17 A. 82, 3 L. R. A. 372. For the same reason the question is different from what it is in Massachusetts, as in *Greves v. Shaw*, 173 Mass. 205, 53 N. E. 372. In short, the New Jersey statute imposes a legacy duty and not a transfer or succession tax, as was decided in reference to the English statute in *Thompson v. Advocate General*, 12 Cl. & F. 1. *Neilson v. Russell*, 76 N. J. L. 655, 71 A. 286, reversing 76 N. J. L. 27, 69 A. 476.

**Sec. 6. Residence, Domicile, etc.**

The terms residence, abode, domicile, and kindred terms differ somewhat in meaning, but when used in statutes similar to the Illinois inheritance statute have frequently been held to be synonymous.

*In re Moir*, 207 Ill. 180, 69 N. E. 905, 99 Am. St. Rep. 205.

## CHAPTER II.

### NATURE OF TAX.

- § 7. An Excise Tax.
- § 8. A Revenue Act.
- § 9. Not a Property Tax.
- § 10. Right to Receive Rather than Right to Transmit is Taxed.
- § 11. Not a Penalty or Forfeiture.
- § 12. Privilege Taxed as a Commodity.

#### Sec. 7. An Excise Tax.

Inheritance taxes are commonly and properly called excise taxes.

*Booth v. Commonwealth*, 130 Ky. 88, 113 S. W. 61, citing *State v. Switsler*, 143 Mo. 287, 45 S. W. 245. *Minot v. Winthrop*, 162 Mass. 113, 122, 26 L. R. A. 259, *Kingsbury v. Chapin*, 196 Mass. 533, 537, 82 N. E. 700. *In re Touhy*, 35 Mont. 431, 90 P. 170, 172. *Scholey v. Rew*, 90 U. S. (23 Wall.) 331. *Knowlton v. Moore*, 178 U. S. 41, 81, 20 S. Ct. 747, 44 L. Ed. 969.

The tax laid by the United States statute of 1864 is not a direct tax but instead of that is plainly an excise tax authorized by the United States Constitution, sec. 8, art. 1. The succession or devolution of real estate is the subject-matter of the tax or duty. "Successor is employed in the act as the correlative to predecessor, and the succession or devolution of the real estate is the subject-matter of the tax or duty, or, in other words, it is the right to become the successor of real estate upon the death of the predecessor, whether the devolution or disposition of the same is effected by will, deed, or laws of descent, from a grantor, testator, ancestor, or other person from whom the interest of the successor has been or shall be derived; nor is the question affected in the least by the fact that the tax or duty is made a lien upon the land, as the lien is merely an appropriate regulation to secure the collection of the exaction." *Per* Clifford, J., in *Scholey v. Rew*, 90 U. S. (23 Wall.) 331, 347.

See further, *post*, s. 28, as to derivation of power to lay tax.

#### Sec. 8. A Revenue Act.

Inheritance taxes have been properly denominated revenue taxation.

*Succession of Givanovich*, 50 La. Ann. 625.

#### Sec. 9. Not a Property Tax.

The courts have held, with few exceptions,<sup>1</sup> that an inheritance tax is a legacy duty,<sup>2</sup> or a tax on the succession, and is not a tax on the

property itself,<sup>3</sup> even in those states which hold the right to inherit to be a natural property right.<sup>4</sup> This result is reached, although the amount of the tax may be measured by the value of the property,<sup>5</sup> although it is made a lien on property,<sup>6</sup> or although the statute on its face levies a tax on property.<sup>7</sup>

<sup>1</sup> *State v. Switzler*, 143 Mo. 287, 330, 45 S. W. 245, 40 L. R. A. 280, 65 Am. St. Rep. 653. *In re Cope*, 191 Pa. St. 1, 20, 43 A. 79, 29 Pittsb. Leg. J. N. S. 379, 45 L. R. A. 316, 71 Am. St. Rep. 749, 44 Wkly. Notes Cas. 89. (The direct inheritance act of 1897.)

Wis. St. 1889, c. 176, is not a tax upon a succession but upon the whole estate at its appraised valuation regardless of whether it is solvent or insolvent. In the case of an insolvent estate nothing would be left after the payment of debts for transmission, and in most estates there are likely to be sufficient debts to reduce the amount of such transmission far below the amount of such valuation. Besides, the amount of such tax is graduated by the amount of such appraisal and is to be paid by the executors at the time of filing the appraisal, notwithstanding they may only be interested as such officials and never succeed to any of such estate. Manifestly the burden imposed is not a succession tax but a tax upon the whole estate regardless of whether it is solvent or insolvent. *State v. Mann*, 76 Wis. 469, 478, 45 N. W. 526, 46 N. W. 51.

<sup>2</sup> *Neilson v. Russell*, 76 N. J. L. 655, 71 A. 286, reversing 76 N. J. L. 27, 69 A. 476.

<sup>3</sup> *State v. Handlin* (Ark. 1911), 139 S. W. 1112. *In re Magnes*, 32 Colo. 527, 77 P. 853. *In re Macky*, 45 Colo. 316, 102 P. 1075. *National Safe Dep. Co. v. Sneed*, 250 Ill. 584, 95 N. E. 973. *McGhee v. State*, 105 Iowa 9, 74 N. W. 695. *Wieting v. Morrow* (Iowa, 1911), 132 N. W. 193. *Booth v. Comm.*, 130 Ky. 88, 113 S. W. 61. *Leavell v. Arnold*, 131 Ky. 426, 115 S. W. 232. *Union Trust Co. v. Durfee*, 125 Mich. 487, 84 N. W. 1101, 7 Detroit Leg. N. 597. *State v. Basille*, 97 Minn. 11, 106 N. W. 93, 6 L. R. A. N. S. 732. *State v. Henderson*, 160 Mo. 190, 217, 60 S. W. 1093. *Gelsthorpe v. Furnell*, 20 Mont. 299, 51 P. 267, 39 L. R. A. 170. *Eastwood v. Russell* (N. J. 1911), 81 A. 108. *In re Swift*, 137 N. Y. 77, 88, 32 N. E. 1096, 18 L. R. A. 709, 64 Hun 639, 16 N. Y. Suppl. 193, 19 N. Y. Suppl. 292. *In re Davis*, 149 N. Y. 539, 547, 44 N. E. 185, affirming 91 Hun 53. *In re Pell*, 171 N. Y. 48, 56, 63 N. E. 789, 57 L. R. A. 540, 89 Am. St. Rep. 791, reversing 60 N. Y. App. Div. 286, 70 N. Y. Suppl. 196. *In re Vanderbilt*, 172 N. Y. 69, 73, 64 N. E. 782, modifying 68 N. Y. App. Div. 27, 74 N. Y. Suppl. 450. See *In re McPherson*, 104 N. Y. 306, 317, 10 N. E. 685, 58 Am. Rep. 502, where the court refuses to decide the question. *In re Morris*, 138 N. C. 259, 50 S. E. 682. *State v. Ferris*, 53 Ohio St. 314, 326, 41 N. E. 579, 30 L. R. A. 218. *In re McKennan*, 25 S. D. 369, 126 N. W. 611, 130 N. W. 33. *Eyre v. Jacob*, 14 Gratt. (Va.) 422, 430, 73 Am. Dec. 367. *Schoolfield v. Lynchburg*, 78 Va. 366, 372. *In re Howard*, 80 Vt. 489, 495, 68 A. 513. *Black v. State*, 113 Wis. 205, 217, 89 N. W. 522, 90 Am. St. Rep. 853. *State v. Bullen*, 143 Wis. 512, 518, 128 N. W. 109. *Scholey v. Rew*, 90 U. S. (23 Wall.) 331, 349. See *Stellwayen v. Durfee*, 130 Mich. 166, 173, 89 N. W. 728.

It is not a tax upon the property or money bequeathed, but a diminution of the amount that otherwise would pass under the will, and hence what the legatee really receives is not taxed at all. It is that which is left after the tax has been



taken off. It is only imposed once and that is before the legacy has reached the legatee, and before it has become his property. *In re Finnen*, 193 Pa. St. 72, 46 A. 269 (the collateral inheritance tax of 1887). "It is a reduction by the state of a part of a deceased person's property which the state may take to meet its necessities and which, in certain cases, it may take in toto, as in the cases of escheated property." *Per Wilkes, J.*, in *State v. Alston*, 94 Tenn. 674, 30 S. W. 750, 28 L. R. A. 178.

The exemption in La. Const. 1898 from the operation of the inheritance tax of property which had borne its just share of taxation arose from a misapprehension of the inheritance tax, which is not a tax proper, but a bonus or premium exacted by the sovereign on the transmission of an estate, the amount being measured by the value of the property. In its very nature it is a privilege or franchise tax and is not affected by the nature and character of the property transmitted. *Succession of Kohn*, 115 La. Ann. 71, 38 S. 898.

That the right to acquire property *inter vivos* is a natural right and the tax on it is a tax on property was suggested and not considered as the case pending was one of intestacy in *Eastwood v. Russell* (N. J. 1911), 81 A. 108.

"It was claimed that because the court held in the *Nunnemacher* case, 129 Wis. 190, 108 N. W. 627, 9 L. R. A. N. S. 121, that the right to inherit a devised property was a natural right, therefore it was a property right; and hence an inheritance tax must logically be held to be a tax upon a property right and subject to the provision that it must be absolutely uniform. The court says that the conclusion does not follow; that taxes frequently are levied upon transactions or occupations which are matters of natural right; and that these matters are mere privilege taxes. *Beals v. State*, 139 Wis. 544, 556, 121 N. W. 347.

<sup>4</sup>*Succession of Kohn*, 115 La. Ann. 71, 38 S. 898. *Kingsbury v. Chapin*, 196 Mass. 533, 537, 82 N. E. 700. *State Street Trust Co. v. Stevens*, 209 Mass. 373, 95 N. E. 851. *Pullen v. Commissioners*, 66 N. C. 361.

"In nearly all inheritance tax laws the statutes provide for the appraising of property to be inherited, but the object of such valuation is not to tax the property itself, it is to arrive at a measure of price by which the privilege of inheriting can be valued." *Per Hunt, J.*, in *Gelsthorpe v. Furnell*, 20 Mont. 299, 51 P. 267, 39 L. R. A. 170.

While referring to the property devised or inherited it does so only to secure uniformity among the beneficiaries receiving the property, the object being to tax each in proportion to his or her interest received and for that privilege. *State v. Henderson*, 160 Mo. 190, 215, 60 S. W. 1093.

It is insisted that as the tax is a certain per cent of the value of the estate and the property pays it, it is therefore a tax on the property itself. But the court relying on *Eyre v. Jacobs*, 14 Gratt. 422, remarks that this is by no means a necessary logical conclusion, that "the intention of the legislature was plainly to tax the transmission of property by devise or descent to collateral kindred and to require that a party then taking the benefit of a civil right accrued to him under the law should pay a certain premium for its enjoyment; and as it was thought just and reasonable that the amount of the premium should bear a certain proportion to the value of the subject enjoyed it is fixed at a certain per centum upon the value of the whole estate transmitted." *Booth v. Commonwealth*, 130 Ky. 88, 113 S. W. 61.

<sup>5</sup>*State v. Ferris*, 53 Ohio St. 314, 326, 41 N. E. 579, 30 L. R. A. 218, distinguishing *Estate of Bittinger*, 129 Pa. St. 344. As to lien, see *post*, s. 406 *et seq.*

"The lien is merely an appropriate regulation to secure the collection of the exaction." *Per* Clifford, J., in *Scholey v. Rew*, 90 U. S. (23 Wall.) 331, 347, 23 L. R. A. 99. *Contra*, *In re Bittinger*, 129 Pa. St. 338.

*Gelsthorpe v. Furnell*, 20 Mont. 299, 51 P. 267, 269, 39 L. R. A. 170. The court relies upon *State v. Hamlin*, 86 Me. 495, 30 A. 76, 41 Am. St. Rep. 569, 25 L. R. A. 632, and on *State v. Ferris*, 53 Ohio St. 314, 41 N. E. 579, where the statutes also on their face were upon the "property," and although it provides that administrators, executors and trustees shall be liable for all such taxes. *Humphreys v. State*, 70 Ohio St. 67, 84, 101 Am. St. 888, 70 N. E. 957, 65 L. R. A. 776, affirming 13 Low. D. 168, 1 C. C. N. S. 1, 14 Cur. D. 238.

## Sec. 10. Right to Receive rather than Right to Transmit is Taxed.

It is the better view that the inheritance tax is laid on the right or privilege of receiving property rather than on that of transmitting,<sup>1</sup> although it has been held also a tax on the right of transmission,<sup>2</sup> or on the transmission itself,<sup>3</sup> and the question will depend on the language of the particular statute.<sup>4</sup>

<sup>1</sup> *In re Kennedy*, 157 Cal. 517, 108 P. 280. *In re Macky*, 45 Colo. 316, 102 P. 1075. *In re Speed*, 216 Ill. 23, 27, 74 N. E. 809, 108 Am. St. Rep. 189; affirmed 203 U. S. 553, *State v. Vinsonhaler*, 74 Neb. 675, 105 N. W. 472. *Pullen v. Commissioners*, 66 N. C. 361. *State v. Ferris*, 53 Ohio St. 314, 325, 41 N. E. 579, 30 L. R. A. 218. *Humphreys v. State*, 70 Ohio St. 67, 84, 101 Am. St. 888, 70 N. E. 957, 65 L. R. A. 776, affirming 13 Low. D. 168, C. C. N. S. 1; 14 Cir. D. 238. *Eury v. State*, 72 Ohio St. 448, 74 N. E. 650. *State v. Alston*, 94 Tenn. 674, 30 S. W. 750, 28 L. R. A. 178. *Knox v. Emerson*, 123 Tenn. 409, 131 S. W. 972. *In re Joyslin*, 76 Vt. 88, 56 A. 281. *Black v. State*, 113 Wis. 205, 217, 89 N. W. 522, 90 Am. St. Rep. 853. *State v. Bullen*, 143 Wis. 512, 518, 128 N. W. 109.

The most exact rule is that which regards the inheritance tax as upon the right to receive property rather than the right to dispose of it. "Properly understood, it is not the right to transmit, but the right and privilege to receive, that is taxed. The right to dispose of property during the lifetime of the owner cannot be separated from the property itself, and therefore to tax the right of disposal by contract in the lifetime of the owner, even though it take effect at his death, is to tax the property itself. But the right to dispose of the property by will or descent, taking effect after the death of the owner, is not so closely connected with the right of property, and it is not clear that such right may not be taxed. But, when the right to receive the property is considered, it is clear that the right is distinct and separate from the property itself, and the state may tax this right to receive property; and this is so whether the property is disposed of by the owner during his lifetime, or at his death. This right to receive property is under the control of the legislature, and it has the power to regulate and lay such burdens thereon as it may see fit, within the provisions of the constitution. To regulate by taxation or otherwise the privilege or right to receive property is not in conflict with the first section of the bill of rights, which recognizes the inalienable right of acquiring, possessing, and protecting

property. Were it otherwise, all our laws as to wills, descent, distribution, and conveyances would be unconstitutional." *Per* Burkett, J., in *State v. Ferris*, 53 Ohio St. 314, 41 N. E. 579, approved in *Gelsthorpe v. Furnell*, 20 Mont. 299, 51 P. 267, 39 L. R. A. 170.

<sup>2</sup>*State Street Trust Co. v. Stevens*, 209 Mass. 373, 95 N. E. 851. "This is an excise tax, imposed, not only upon the right of the owner of property to transmit it after his death, but also upon the privilege of his beneficiaries to succeed to the property thus dealt with," *Att. Gen. v. Stone*, 209 Mass. 186, 95 N. E. 395.

<sup>3</sup>*In re McKennan*, 25 S. Dak. 369, 126 N. W. 611, 614, reversed on rehearing, 130 N. W. 33.

The court after considering ancient and modern death duties concludes as follows: "Although different modes of assessing such duties prevail, and although they have different accidental names, such as probate duties, stamp duties, taxes on the transaction, or the act of passing of an estate or a succession, legacy taxes, estate taxes or privilege taxes, nevertheless tax laws of this nature in all countries rest in their essence upon the principle that death is the generating source from which the particular taxing power takes its being and that it is the power to transmit, or the transmission from the dead to the living, on which such taxes are more immediately rested." *Knowlton v. Moore*, 178 U. S. 41, 56, 20 S. Ct. 747, 44 L. Ed. 969.

<sup>4</sup>*Minot v. Winthrop*, 162 Mass. 113.

## Sec. 11. Not a Penalty or Forfeiture.

The tax is in the nature of an assessment and is not a penalty,<sup>1</sup> or a forfeiture.<sup>2</sup>

<sup>1</sup>*Strode v. Conn.*, 52 Pa. St. 181.

<sup>2</sup>*Arnaud v. Arnaud*, 3 La. Ann. 337. *Carpenter v. Pennsylvania*, 17 How. (U. S.) 456, 462.

## Sec. 12. Privilege Taxed as a "Commodity."

The privilege of transmitting or receiving by will or descent property on the death of the owner is a "commodity" within the meaning of this word in the Massachusetts constitution, and an excise may be laid upon it.

*Minot v. Winthrop*, 162 Mass. 113, 122 (Lathrop, J., dissenting), 26 L. R. A. 259.

## CHAPTER III.

### THE INHERITANCE TAX IN POLITICAL ECONOMY.

§ 13. Economically Sound.

§ 14. Arguments in Favor of and Against Tax.

#### Sec. 13. Economically Sound.

Firmly entrenched in a long and honorable history, with the endorsement of the leading economists of ancient and modern times, and approved by the present practice of most civilized governments, he would be indeed brave who should attempt to attack the theory or validity of any sane inheritance tax from an economic standpoint.

See *In re Morris*, 138 N. C. 259, 50 S. E. 682.

A very learned discussion of the economic theory of the inheritance taxes may be found in the monograph on the inheritance tax by Max West, published in 1908, on pages 189, *et seq.* Mr. West notes that the inheritance tax has received the approbation of political economists from a very early day down to recent times. It was advocated by Pliny the younger, and by Adam Smith (*Wealth of Nations*, bk. V, chap. II, pt. II), although Smith pointed out the inequality of the taxes caused by the fact that the frequency of transference was not always equal in property of equal value. Mr. West notes the objection of Ricardo (*Principles of Political Economy and Taxation*, chap. VIII), whose views were criticised by McCulloch. Jeremy Bentham was a strong advocate of the inheritance tax. John Stuart Mill (*Principles of Political Economy*, bk. V, chap. XI, s. 3), advocated not only progressive inheritance taxes but the abolition of collateral inheritance and a limitation of the amount which any one should be allowed to take either by inheritance or bequest. Mr. West, on pages 195 and 196, cites many political writers on inheritance taxes.

From an economic standpoint no tax has more to commend it and none is easier to defend. As has been well said: "This method of increasing the public revenue is wise, simple, and effective — wise because it does not touch private property during the life of the owner and thus places no burden upon business activity; simple because the tax is easily ascertained and collected while estates are being administered in the probate court; effective because by the application of progressive rates, it adds no burden to the poor, but permits those who have much to contribute to the government somewhat in proportion to their ability to pay. It invades no natural rights. It violates no maxim of the law. It overleaps no constitutional barriers. It is neither revolutionary nor socialistic, but is, on the contrary, a measure of practical wisdom and social

justice, and has been truly styled an 'institution of democracy.'" Another desirable feature of the inheritance tax is the fact that it cannot be shifted. (Report of Minnesota Tax Commission, 1910.)

**How often Property becomes Subject to Tax.** In the learned treatise on the inheritance tax by Max West, pages 228, *et seq.*, he points out that the length of a generation is from thirty-three to thirty-six years and that one thirty-third to one thirty-sixth of the private wealth of a country will change hands annually by inheritance, bequest, or gifts *causa mortis*, aside from the exemptions. It has been calculated that in Massachusetts one-ninth of the tax will be eliminated by an exemption of five thousand dollars or one-fifth by an exemption of ten thousand dollars, and that at least one-fiftieth of the private wealth of a state should annually become subject to inheritance taxes, even if the ten thousand dollar exemption applied to all estate in New York and Massachusetts.

### **Sec. 14. Arguments in Favor of and Against the Tax.**

The most common arguments against the tax are that it bears on those least able to afford it, and that it is harsh and unequal in one form or another.<sup>1</sup>

No defense can well be made of confiscation, as practiced in Oklahoma and in the New York act of 1910, or of the double taxation which most of our statutes impose on non-residents, but to a fair, reasonable law with liberal exemptions there can be no objection.

There is much to be said in favor of the tax. It is certain and economical in collection, it bears usually on the wealthy, who are best able to pay it, and as it never takes what the taxpayer has, but only what he is to get, it is ideal from the standpoint of the French tax commissioner who remarked, "The science of taxation consists in plucking the most feathers with the least squawking."<sup>2</sup>

<sup>1</sup>Mr. West, on pages 209 *et seq.*, considers the objections to the inheritance tax as follows:—

*First.* That it is a tax on capital and hence tends to diminish the national wealth.

*Second.* Its inequality on account of a varying frequency of transfers resulting from death.

*Third.* That to levy a property tax and inheritance tax on the same property in the same year constitutes double taxation.

*Fourth.* That the tax is a tax upon widows and orphans.

*Fifth.* That the tax will discourage industry and thrift and drive away capital.

*Sixth.* That the tax will be evaded by gifts *inter vivos*.

*Seventh.* That the tax is confiscation, extortion, and a dangerous step towards communism.

<sup>2</sup>**Advantages.** On pages 213 *et seq.*, Mr. West considers the practical advantages of the inheritance tax as follows:—

It is certain, the cost of collection is not high, and as to the time of payment, it is the most convenient of all direct taxes. It leaves little opportunity for

fraud. The receipts do not come in all at the same time, but are distributed through the entire year. The returns are remarkably constant from year to year. It is elastic, as an increase in the rate of tax cannot diminish the death rate and the tax itself cannot be shifted.

"Ability or faculty to pay has come to be the test in determining the justness of taxation." *State v. Basille*, 97 Minn. 11, 16, 106 N. W. 93, 6 L. R. A. (N. S.) 732.

The arguments that the recipient of the larger amount is able to pay a larger rate of tax and that it is against public policy to allow large estates to be held together after the death of the owners, are discussed in *In re McKennan*, 25 S. D. 369, 126 N. W. 611, 618 (reversed on rehearing), 130 N. W. 33.

**Arguments Classified.** Mr. West classifies the arguments in favor of the inheritance tax, on pages 199 *et seq.*, as follows:—

1. The Extension-of-Escheat Argument — that no good reason exists for intestate inheritance between distant relatives.

2. The Diffusion-of-Wealth Argument — that large estates should not be allowed to remain in one family.

3. The Partnership Argument — that the state is a silent partner in the business of each citizen and when the partnership is dissolved by death the silent partner is entitled to a share of the capital.

4. The Value-of-Service Argument — that the inheritance tax is a payment for the particular services connected with the institutions of inheritance and bequest and that these are not natural rights, but privileges conferred by positive law.

5. The Cost-of-Service Argument considers the expense of governmental action rather than its value to the heir and would make the tax defray the expense of the probate courts, and other expenses connected with the inheritance.

6. The Back-Taxes Argument, to the effect that inheritance taxes are in place of taxes which have been evaded by property owners during their lives.

7. The Lump-Sum Argument considers the tax as a property tax or a capitalized income tax and paid once in a generation instead of once a year.

8. The Accidental-Income Argument — that inheritance is a sudden acquisition of property without effort on the part of the heir, an accretion of wealth, which manifestly increases his ability to pay taxes.

9. The Co-heirship of the State in which the state and the local political units are regarded as co-heirs with individuals.

The tax is regarded in number 1 and 2 as a limitation of inheritance in numbers 3, 4 and 5 as a fee; and in numbers 6, 7 and 8 as a tax.

**Strongest Argument for the Tax.** "One of the strongest arguments in favor of the inheritance tax arises from the recognized right and duty of the state to regulate inheritance to such an extent as the public welfare may require. The right of bequest and inheritance is a natural right only to the extent that it is socially useful; that it furnishes an incentive to the creation of wealth or furthers its preservation and judicious management. Although we uphold devise and descent as the best known method of securing this end, yet we must admit that it is open to very serious objection and very often fails completely. While the man who acquires wealth by that act gives evidence of his ability to manage it properly, it is by no means so certain that his heirs will possess that qualification. It is most fitting, therefore, that the state in apportioning



the burden of taxation should take cognizance of this condition and obtain a portion of its revenue from estates at the time of their transfer to hands that have given no evidence of ability to manage them economically. Such a tax, if the rate be moderate, can only further the true social function of devise and descent, *i.e.*, the furtherance of the creation and the judicious management of wealth. The tax is an incentive rather than a hindrance to the creation of wealth and insures that after its transfer at death a certain portion at least will serve a socially useful purpose."

(Address by Dr. Robert H. Whitten, in 1901, before the National Tax Conference.)

## CHAPTER IV.

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### HISTORY.

- § 15. Early History.
- § 16. State Statutes Copied from other States.
- § 17. The Present Situation.
- § 18. History of Federal Legislation.

#### Sec. 15. Early History.

Inheritance taxes have been imposed since very early times,<sup>1</sup> the earliest mention of them being in Egypt.<sup>2</sup> The tax is no new invention of the legislative power for the purpose of putting money in the public coffers. Gibbon, the historian, traces its origin to the Emperor Augustus, and says it was suggested by him to the senate as a means of supporting the Roman army; that it was imposed at the rate of five per cent, upon all legacies or inheritances above a certain value, but that it was not collected from the nearest relatives upon the father's side; and that the tax was most fruitful as well as most comprehensive.<sup>3</sup> It was called "*vicessima hereditatum et legatorum*." This method of taxation has been long resorted to in European countries, and was introduced into Great Britain by Lord North and adopted in 1780. Of the states of the American Union, Pennsylvania was the first to adopt it, in 1826, since which date it has been adopted as a means of governmental support by a great many other states.<sup>4</sup> Such taxes were recognized by the Roman law.<sup>5</sup> They were adopted in England in 1780, and have been much extended since that date.<sup>6</sup> Such taxes are now in force generally in the countries of Europe.<sup>7</sup> In the United States they were enacted in Pennsylvania in 1826; Maryland, 1844; Delaware, 1869; West Virginia, 1887, and still more recently in Connecticut, New Jersey, Ohio, Maine, Massachusetts, 1891; Tennessee in 1891, chapter 25, now repealed by chapter 174, acts 1893. They were adopted in North Carolina in 1846, but repealed in 1883, were enacted in Virginia in 1884, repealed in 1885, re-enacted in 1863, and repealed in 1884.<sup>8</sup>

The practice has long been resorted to in European countries and was introduced in England in the last century, and was en-

larged from time to time till 1853, when it was extended to all successions to real property, chattels real, and a vast variety of personal property and rights.<sup>9</sup>

<sup>1</sup>*Appeal of Nettleton*, 76 Conn. 235, 241, 56 A. 565. *State v. Basille*, 97 Minn. 11, 16, 106 N. W. 93, 6 L. R. A. (N. S.) 732. *Knowlton v. Moore*, 178 U. S. 41, 48, 49, 20 S. Ct. 747, 44 L. Ed. 969.

<sup>2</sup>The early history of the inheritance tax is traced by Max West in his learned monograph on the inheritance tax, pages 11 *et seq.* Mr. West states that the earliest known inheritance tax was imposed in Egypt in the seventh century before Christ; that the Romans copied the idea from the Egyptians; that it was imposed in Rome by the Emperor Augustus in the year 6 A.D., and prevailed for about two hundred and fifty years. Under the feudal system the inheritance tax, as Mr. West observes, was represented by the relief and heriot. Mr. West suggests that the relief and heriot are probably feudal in their origin and are not copied from the Roman tax.

Inheritance taxes during the seventh century were imposed in Germany and the Netherlands and in Italy before the close of the fourteenth century and at various times since.

<sup>3</sup>1 Gibbon's Rome, 133; Encyc. Brit. (8th Am. Ed.) 65, tit. "Taxation."

<sup>4</sup>*In re Morris*, 138 N. C. 259, 50 S. E. 682.

<sup>5</sup>Gibbon's Decline and Fall of the Roman Empire, vol. 1, pp. 163-4.

<sup>6</sup>Dowell's History of Taxation in England, 148; Acts 20 George III, c. 28; 45 George III, c. 28; 16 and 17 Vict., c. 51; *Green v. Croft*, 2 H. Bl. 30; *Hill v. Atkinson*, 2 Merivale 45.

<sup>7</sup>"Review of Reviews," February, 1893.

<sup>8</sup>*Per Wilkes, J.*, in *State v. Alston*, 94 Tenn. 674, 30, S. W. 750, 751, 28 L. R. A. 178, quoted with approval in *Magoun v. Illinois Trust & Savings Bank*, 170 U. S. 283, 287, 18 Sup. Ct. 594, 42 L. Ed. 1037.

<sup>9</sup>*State v. Hamlin*, 86 Me. 495, 498, 30 A. 76, 41 A. St. Rep. 569, 25 L. R. A. 632.

## Sec. 16. State Statutes Copied from Other States.

The early New York act has been followed very closely in Illinois,<sup>1</sup> Maine,<sup>2</sup> Michigan,<sup>3</sup> and Wisconsin,<sup>4</sup> and with some changes in New Jersey.<sup>5</sup>

The Maine statute has been the model for legislation in Kentucky<sup>6</sup> and Ohio, which also follows the Virginia act.<sup>7</sup> The Tennessee statute is copied after Pennsylvania,<sup>8</sup> and the New Hampshire act after Massachusetts,<sup>9</sup> and the Utah act after Iowa.<sup>10</sup>

<sup>1</sup>*People v. Griffith*, 245 Ill. 532, 92 N. E. 313. See statement in *In re Inheritance Tax*, 23 Colo. 492, 493, 48 P. 535.

<sup>2</sup>*State v. Hamlin*, 86 Me. 495, 500, 30 A. 76, 41 Am. St. Rep. 569, 25 L. R. A. 632.

<sup>3</sup>*Stellwagen v. Durfee*, 130 Mich. 166, 89 N. W. 728, 8 Detroit Leg. N. 1204. *Miller v. McLaughlin*, 141 Mich. 425, 104 N. W. 777, 12 Detroit Leg. N. 501. *In re Stanton*, 142 Mich. 491, 105 N. W. 1122, 12 Detroit Leg. N. 829.

<sup>4</sup> Wis. St. 899, c. 355, is in all essential respects a literal copy of the New York law, N. Y. St. 1892, c. 399, with the important exceptions that in the New York law all transfers to collateral kindred and strangers of the value of five hundred dollars or over are taxed, while in the Wisconsin law such transfers are not taxed unless they equal or exceed ten thousand dollars; and in New York the tax is imposed upon transfers of both real and personal property, while in Wisconsin it is confined to personal property alone. *Black v. State*, 113 Wis. 205, 211, 89 N. W. 522, 90 Am. St. Rep. 853.

<sup>5</sup> *Neilson v. Russell*, 76 N. J. L. 655, 71 A. 286, 287, reversing 76 N. J. L. 27, 69 A. 476.

<sup>6</sup> *Booth v. Commonwealth*, 130 Ky. 88, 113 S. W. 61.

<sup>7</sup> *Dyer v. Hagerty*, 5 Ohio Cir. Dec. 701, 12 Ohio Cir. Ct. 606.

<sup>8</sup> Tenn. St. 1893, c. 174, is almost identical in terms with the Pennsylvania statute. *English v. Crenshaw*, 120 Tenn. 531, 110 S. W. 210.

<sup>9</sup> *Mann v. Carter*, 74 N. H. 345, 347.

<sup>10</sup> *Dixon v. Rickets*, 26 U. 215, 72 P. 47.

## Sec. 17. The Present Situation.

Most civilized countries are today employing the inheritance tax as a source of revenue,<sup>1</sup> and it is in force in the United States in all but a few states.<sup>2</sup>

<sup>1</sup>**Now Employed in Nearly All Enlightened Countries.** Under different names the tax is now employed in nearly every civilized country, and is most highly developed in the Australasian states, where democratic ideas have taken the deepest root. It exists in Great Britain, France, Germany, Switzerland, the Netherlands, Belgium, Sweden, Norway, Denmark, Austria-Hungary, Italy, and nearly all of the other European countries. It is part of the revenue system of every state in the union except Alabama, Florida, Georgia, Indiana, Kansas, Mississippi, Nevada, Rhode Island, and South Carolina. In the Australasian colonies succession duties are among the chief source of revenue; and in some cases heavy progressive taxes have been imposed, not from fiscal considerations alone, but also for the purpose of breaking up large estates. The rates are progressive in all of the colonies, rising to ten per cent in Victoria, New South Wales, South Australia, and Western Australia, to thirteen per cent in New Zealand, and to twenty per cent in Queensland. It is stated upon the best authority that the institution of private property has not weakened, nor capital driven from the colonies, by these progressive taxes. They have given very general satisfaction and in almost every instance the rates have been increased after the tax has been in operation for a time. The graduation according to relationship is much less elaborate than in European countries; usually not more than two or three classes of relatives are distinguished. Report of Minnesota Tax Commission, 1910.

<sup>2</sup> See tables, *post*, p. 1235.

## Sec. 18. History of Federal Legislation.

Congress imposed a legacy tax in 1797 by the act of July 6, 1797, c. 11, 1 Stat. 527, which act was repealed June 30, 1802,

2 Stat. 148, c. 17. In this statute, as in the English legacy duty statute of 1780, the mode of collection provided was by stamp duties laid on the receipts evidencing the payment of the legacies or distributive shares in personal property, and the amount was, like the English legacy tax, charged upon the legacies and not upon the residue of the personal estate.

A legacy tax was again enacted by the statute of 1862, 12 Stat. 433, 485, sections 111 and 112 of chapter 119, and repealed in 1870. This statute, like the act of 1797, was a tax imposed on legacies or distributive shares of personal property, but contained a new form of death duty. By section 194 a probate duty, proportioned to the amount of the estate and to be paid by way of stamps, was levied, and repealed in 1872. The result of the act of 1862 was to cause the death duties imposed by congress to greatly resemble those then existing in England; that is, first, a legacy tax, chargeable against each legacy or distributive share, and a probate duty chargeable against the mass of the estate. Thus it came to pass that the system of death duties prevailing in England and that adopted by congress were substantially identical, and of a three-fold nature, that is, a probate duty charged upon the whole estate, a legacy duty charged upon each legacy or distributive share of personalty, and a succession duty charged against each interest in real property. The fact that the framers had in mind the English law was conclusively demonstrated by section 127, wherein the succession or real estate inheritance tax was defined in substantially similar terms to that contained in the English succession duty act. The parallel was observed by the court in *Sholey v. Rew*, 23 Wall. 331, 349.<sup>1</sup>

The tax was again enacted as a war measure in 1898 and repealed in 1902.<sup>2</sup>

<sup>1</sup> *Knowlton v. Moore*, 178 U. S. 41, 50, 20 S. Ct. 747, 44 L. Ed. 969.

<sup>2</sup> See *post*, p. 1264 *et seq.*

## CHAPTER V.

### WHAT LAW GOVERNS. — PLACE.

§ 19. Law of Domicile of Decedent. — Change of Domicile.

§ 20. Power of Appointment.

§ 21. Extraterritorial Effect of Judgment as to Domicile.

#### Sec. 19. Law of Domicile of Decedent. — Change of Domicile.

Inheritance taxes may not apply to the estates of non-residents,<sup>1</sup> unless such estates are specifically included.<sup>2</sup> The law of the domicile of the decedent governs the rate of tax and the persons liable.<sup>3</sup>

Where the grantor, after making a deed in trust to assign the property in accordance with her will, moved from Pennsylvania, where the trustee resided, to New York, where she died, the court holds that the change in the domicile of the grantor did not affect the right of the state to collect the tax, that the statute grasped the estate when one citizen created the trust with the features described and made this the domicile or situs of the estate. As the grantor could not take the property out of its jurisdiction by any act of hers, so she could not make it follow her or affect it with any incidents of the new domicile when she removed.<sup>4</sup>

<sup>1</sup> *United States v. Morris*, 27 Fed. 341. *United States v. Hunnewell*, 13 Fed. 617, aliens.

The question whether the statute of 1898, section 29, imposes a legacy tax upon the estates of persons who are not domiciled in the United States at the time of death, is not free from doubt, and the attorney general declines to give any opinion upon it. 23 Opinions of the Attorney General, 221 (September 7, 1900).

"In England the question of probate duty depends upon the situs of the property and not the domicile of the owner. *Attorney General v. Hope*, 1 Cramp., Mes. & Ros., 530. It was for some time held that the legacy duty imposed by 36 Geo. III, ch. 52, and 48 Geo. III, ch. 149, depended upon the same consideration. *Attorney General v. Cockerell*, 1 Price, 560. But these cases were overruled in *Thompson v. Advocate General*, 12 Clark & Fin. 1; and the principle was settled that the law of the domicile of the owner of personal property determines its liability to legacy duty. The same rule was adopted in respect to the succession duty under 16 and 17 Vic., ch. 51. *Wallace v. Attorney General*, L. R. 1 Ch. App. c. 1. In the case last referred to, Lord Chancellor Cranworth said,

'Parliament has, no doubt, the power of taxing the succession of foreigners to their personal property in this country; but I can hardly think we ought to presume such an intention unless it is clearly stated.' Thus whilst the power of Parliament to impose the tax without reference at all to the subject of domicile is distinctly recognized, it was held that the language of the acts did not furnish any indication of an intention to exercise that power, and that, therefore, the law of the domicile of the owner fixed the liability of his property to pay these taxes. In our opinion, for the reasons we have given, the Maryland statute cannot be so construed." *Per* McSherry, J., in *State v. Dalrymple*, 70 Md. 294, 304, 17 A. 82, 3 L. R. A. 372. See further, *post*, Chapter XXVIII.

<sup>2</sup>Most states now tax the property in the state of non-residents. See tables, *post*, p. 1285.

<sup>3</sup>The testator while a citizen of France married, and under French law his wife was entitled to one-half of his property on his death; but the court holds that where he afterwards becomes a citizen of New York and owns property there one-half his property is not exempt from taxation on the ground that it belongs to his wife. *In re Majot*, 135 N. Y. App. Div. 409, 119 N. Y. Suppl. 888. See *post*, s. 288.

The intestate died a citizen of Kentucky having personal property in Tennessee. Under the laws of Kentucky his mother was the sole distributee, while under the laws of Tennessee his brother would take one-half of the estate. Under Tenn. St. 1893, c. 174, s. 1, this property is not subject to tax, as it is settled that if one dies domiciled in a foreign state leaving personal property in this state the laws of the domicile of the deceased will determine who are entitled to the surplus after the payment of debts. *Fidelity & Deposit Co. v. Crenshaw*, 120 Tenn. 531, 110 S. W. 1017.

**Conversion.** A note in 19 *Harvard Law Review*, pp. 201, 202, discusses conversion and suggests that the question as to whether a conversion has taken place must be determined by the law of the state where the land is situate, since that state alone has dominion over the property. But if it is determined that there is a conversion succession will occur by the law of the decedent's domicile as in the case of other personality.

**Findings as to Domicile.** The court upholds a finding as to domicile in Pittsfield, where it appears that it was the only place where the testator ever voted or paid a personal tax, and that he continued to return there to his home with a friend to the very time of his death, and died there, that he declared that to be his home, and made it a point to return there and vote at the presidential elections when his business interests would permit. *In re Dalrymple*, 215 Pa. St. 367, 371, 64 A. 554.

Under the Illinois inheritance tax a man is a resident of Illinois who has lived in Illinois for some years and who has declared his intention of moving out of the state as soon as his business is settled. He was taken ill and went to the house of a daughter in another state, where he died. The facts show that he went to his daughter's house for a temporary purpose only. *In re Moir*, 207 Ill. 180, 69 N. E. 905, 99 Am. St. Rep. 205. As to disputed domicile see further, *post*, s. 192.

<sup>4</sup>*Commonwealth v. Kuhn*, 2 Pa. Co. Ct. 248.

## Sec. 20. Power of Appointment.

Where a testator died in 1870 a resident of New York, leaving a will under which he gave his daughter a life estate with a power of appointment, and the daughter died in 1908, being a resident of the state of Rhode Island, leaving a will by which she exercised the power, no tax can be imposed under New York law, as the life tenant in making her will exercised a privilege granted by the laws of her own state, and not by those of the state of New York.

*In re Fearing*, 200 N. Y. 340, 93 N. E. 956, affirming 123 N. Y. Suppl. 396. As to powers, see further, *post*, s. 139 *et seq.*

## Sec. 21. Extraterritorial Effect of Judgment as to Domicile.

The decision of one state as to domicile is binding on courts in other states.

Where a will was probated by the probate court of New Jersey which found that the deceased was a resident of New Jersey, this decree is entitled to full faith and credit under the federal constitution in another state and is a bar in the courts of another state against an attempt in the latter state to enforce a claim for the inheritance tax on the ground that the testator was domiciled there at the time of his death. *Till v. Kelsey*, 207 U. S. 43, 52 L. Ed. 95, reversing 182 N. Y. 557. See, however, *In re Hartman*, 70 N. J. Eq. 664, 62 A. 560; *In re Cummings*, 142 N. Y. App. Div. 377, 127 N. Y. Suppl. 109, reversing 63 Misc. 621, 118 N. Y. Suppl. 684. See also, *post*, s. 192.

The action of the court of the domicile as to distribution of assets may be binding on the court of the jurisdiction where the assets are, on the question of marshaling assets. *In re Clark*, 37 Wash. 671, 80 P. 267.



## CHAPTER VI.

### WHAT LAW GOVERNS.—TIME.

- § 22. Law at Death of Decedent.
- § 23. Effect of Unconstitutional Statute.
- § 24. Property in Hands of Trustee.
- § 25. Gifts Causa Mortis.
- § 26. Deed Inter Vivos.

#### Sec. 22. Law at Death of Decedent.

The substantive rights of the state and the taxpayer in an inheritance tax depend on the law in force at the death of the decedent,<sup>1</sup> even under a will executed before the passage of the statute in force at his death,<sup>2</sup> and not on the time the remainder falls in,<sup>3</sup> but the procedure governing its collection will depend on the law in force at the date when the proceedings began.<sup>4</sup>

<sup>1</sup>*In re Stanford's Estate*, 126 Cal. 112, 58 P. 462, 45 L. R. A. 788. *Trippet v. State*, 149 Cal. 521, 86 P. 1084, 8 L. R. A. (N. S.) 1210. *In re Woodard's Estate*, 153 Cal. 39, 94 P. 242. *Crocker v. Shaw*, 174 Mass. 266, 54 N. E. 549. *State v. Switsler*, 143 Mo. 287, 330, 45 S. W. 245, 40 L. R. A. 280, 65 Am. St. Rep. 653. *In re Fayerweather*, 143 N. Y. 114, 38 N. E. 278, right to interest. *In re Davis*, 149 N. Y. 539, 545, 44 N. E. 185, affirming 91 Hun 53. *In re Sloane*, 154 N. Y. 109, 47 N. E. 978, 19 N. Y. App. Div. 411, 46 N. Y. Suppl. 264. *In re Milne*, 76 Hun 328, 27 N. Y. Suppl. 727, penalties and interest. *In re Sterling*, 9 Misc. Rep. 224, 30 N. Y. Suppl. 385.

N. Y. St. 1885, c. 483, which was approved June 10, 1885, did not take effect until twenty days after its passage, and therefore no tax could be levied on the estate of a testatrix who died June 16, 1885. *In re Howe*, 112 N. Y. 100, 19 N. E. 513, 2 L. R. A. 825, affirming 48 Hun 235. (Law governing action for refunding, *post*, s. 414).

<sup>2</sup>*In re Seaman*, 147 N. Y. 69, 77, 41 N. E. 401, reversing 87 Hun 619.

<sup>3</sup>Where the testator died in 1828, leaving a life tenant who died in 1864, the whole estate passed in 1828, and the tax on the remainder interest is payable at the rate under the statute in force in 1828 of two and one-half per cent and not under the higher rate in force on the death of the life tenant. *Commonwealth v. Eckhart*, 53 Pa. St. (3 P. F. Smith) 102.

<sup>4</sup>*In re Sloane*, 154 N. Y. 109, 47 N. E. 978, 19 N. Y. App. Div. 411, 46 N. Y. Suppl. 264. *In re Davis*, 149 N. Y. 539, 545, 44 N. E. 185, affirming 91 Hun 53. See further, Proceedings for collection, *post*, s. 395 *et seq.*

### Sec. 23. Effect of Unconstitutional Statute.

Where an unconstitutional statute was nominally in force at the date of a certain transfer, and after the transfer was made a valid law was passed, the transfer is subject to no tax whatever. The act was void from the beginning and its nominal existence in no way affected the validity of the transactions.<sup>1</sup> So an unconstitutional amendment has no effect on the original act.<sup>2</sup>

<sup>1</sup>*State v. Probate Court, Washington County*, 102 Minn. 268, 285, 113 N. W. 888.

<sup>2</sup>*Eastwood v. Russell* (N. J. 1911), 81 A. 108.

### Sec. 24. Property in Hands of Trustee.

A trustee who at the time of the passage of the inheritance tax act held personal property upon a trust under a will to be distributed on a future date is not "a person possessed" of such property. Personal estate passing under the intestate laws passes from the intestate himself and never from the administrator.

*McClain v. Pennsylvania Co. for Insurance and Annuities*, 108 Fed. 618, 47 C. C. A. 529.

**Trustee's Commissions.** Where the testator died March 27, 1845, the court holds that the commissions of the trustees were subject to a tax of ten per cent in favor of the state imposed by the act of 1844, c. 187, which went into effect June 2, 1845. *Williams v. Mosher*, 6 Gill (Md.) 339.

### Sec. 25. Gifts Causa Mortis.

Gifts *causa mortis* are governed by the law in effect at the death of the donor.

*In re Seaman*, 147 N. Y. 69, 77, 41 N. E. 401, reversing 87 Hun 619 (under N. Y. St. 1892, providing for the imposition of a tax when any person becomes beneficially entitled by any such transfer "whether made before or after the passage of this act"). See also, *post*, s. 99.

### Sec. 26. Deed Inter Vivos.

A deed *inter vivos* is governed by the law of the date of the transfer.

Minn. St. 1905, c. 288, has no application to property which was actually sold and disposed of before the date of its enactment. *State v. Probate Court, Washington County*, 102 Minn. 268, 285, 113 N. W. 888. But see also *Crocker v. Shaw*, 174 Mass. 266, 54 N. E. 549, reported fully under *post*, s. 141, n. 3. See further, *post*, s. 99.

## CHAPTER VII.

### POWER TO IMPOSE.

- § 27. State Legislatures.
- § 28. Derived from Taxing Power or from Power to Regulate Descent.
- § 29. Power of State to Regulate or Prohibit Devolution on Death.
- § 30. Power of Congress.
- § 31. Power of Municipalities.

#### Sec. 27. State Legislatures.

The legislature has implied inherent power to levy an inheritance tax although no such power is expressly granted by the constitution.

*Booth v. Commonwealth*, 130 Ky. 88, 113 S. W. 61. *State v. Dalrymple*, 70 Md. 294, 17 A. 82, 3 L. R. A. 372. *State v. Switzler*, 143 Mo. 287, 316, 45 S. W. 245, 40 L. R. A. 280, 65 Am. St. Rep. 653. *Matter of McPherson*, 104 N. Y. 306. *Pullen v. Commissioners* (1872), 66 N. C. 361. *In re Morris*, 138 N. C. 259, 50 S. E. 682. *State v. Ferris*, 53 Ohio St. 314, 41 N. E. 579, 30 L. R. A. 218. *Eury v. State*, 72 Ohio St. 448, 74 N. E. 650. *Schoolfield v. Lynchburg*, 78 Va. 366, 372. *Magoun v. Illinois Trust & Savings Bank*, 170 U. S. 283, 287. *Snyder v. Bellman*, 190 U. S. 249, 252.

The inheritance tax is in effect an assertion of sovereignty in the estate of deceased persons. *Kochersperger v. Drake*, 167 Ill. 122, 47 N. E. 321, 41 L. R. A. 446, affirmed in *Magoun v. Illinois Trust, etc.*, 170 U. S. 283, 18 Sup. Ct. 594.

"It is not to be questioned that the power to tax is vested in the legislature; that it is unrestricted, except when it is opposed to some provision of the federal or state constitution; and that it extends 'to every trade or occupation, to every object of industry, use or enjoyment, and to every species of possession.' Nor is it to be questioned that the subject of taxation in the present case is one within legislative control, because inheritances, distributive shares, and legacies are but creatures of the law." *Per* Blodgett, J., in *Curry v. Spencer*, 61 N. H. 624, 630, 60 Am. St. Rep. 337.

It was urged that the state constitution grants to the legislature special and delegated powers, and legislative enactments to be valid must come within such grant of powers. But the court finds that the legislature in the absence of constitutional prohibition has the power to impose conditions by way of a tax upon legacies and successions. *State v. Clark*, 30 Wash. 439, 71 P. 20.

It is claimed that as the constitution did not expressly give a right to levy an inheritance tax the legislature had not that authority. But the court relies on Nebraska decisions to the effect that the constitution was not a grant but a restriction on legislative power and that the legislature may legislate upon any subject not prohibited by the constitution. The court concludes, following *State v. Lancaster*, 4 Neb. 537, that the enumeration in the constitution of certain

subjects for taxation did not preclude the legislature from imposing other taxes where there was no prohibition. *State v. Vinsonhale*, 74 Neb. 675, 105 N. W. 472, 474.

"Some form of death duty has been used as a mode of taxation from ancient times. When the constitution of the United States was adopted, death duties had been in use in England, as well as elsewhere, and were an established mode of taxation known to the people, who, in the exercise of the sovereignty vested in them, enacted that fundamental law. The imposition of death duties must therefore have been included in the broad power of taxation granted to the legislature by the constitution. This is true of the constitution of our state." *Appeal of Nettleton*, 76 Conn. 235, 241, 56 A. 565.

The only case which questions the correctness of the doctrine that the imposition of an inheritance tax is authorized under our governmental system when not expressly forbidden by the state constitution is *Nunnemacher v. State*. There the court sustains the theory of an inheritance tax not on the power to prohibit succession but upon the power to reasonably regulate by tax. The court finds that the state constitution expressly recognizes the fact that the state may have other sources of income aside from the direct tax upon property and that the section as to taxation is simply intended as a regulation covering the levying of a direct tax upon property if such a tax be necessary. *Nunnemacher v. State*, 129 Wis. 190, 223, 108 N. W. 627, 9 L. R. A. N. S. 121.

## Sec. 28. Derived from Taxing Power or from Power to Regulate Descent.

Inheritance taxes may be based on the power to regulate descent,<sup>1</sup> or on the power to tax.<sup>2</sup> The imposition of a succession tax does not change the law of descent, but the laying of the tax merely casts upon the devolution of property a burden that was not borne before.<sup>3</sup>

<sup>1</sup> *People v. Griffith*, 245 Ill. 532, 92 N. E. 313. "The right to impose such inheritance tax is based upon the power of the state in its sovereign capacity to regulate and control the transmission of property by inheritance. Although designated as a tax, it is not such a tax upon property as is contemplated by the state constitution. It is rather a contribution which the state levies for itself as a condition upon which the title to property shall pass upon the death of its owner." *In re Inheritance Tax*, 23 Colo. 492, 493, 48 P. 535.

An inheritance tax law "is nothing more than an exercise of the power which every state and sovereignty possesses, of regulating the manner and term upon which property real or personal within its dominion may be transmitted by last will and testament or by inheritance." *Per* Torrey, C. J., in *Mager v. Grima*, 8 How. 492, 493.

"The power to tax inheritances does not arise solely from the power to regulate the descent of property, but from the general authority to impose taxes upon all property within the jurisdiction of the taxing power. It has usually happened that the power has been exercised by the same government which regulates the succession to the property taxed; but this power is not destroyed by the dual character of our government, or by the fact that under our constitution the

devolution of property is determined by the laws of the several states." It was claimed that the authority to lay a succession tax arose solely from the power to regulate the descent of property. But the court replies that this proposition proves too much, that a denial of the right to regulate succession goes to the whole power of the government to impose a succession tax. *Snyder v. Bettman*, 190 U. S. 249, 252.

<sup>2</sup> *State v. Switsler*, 143 Mo. 287, 315, 45 S. W. 245, 40 L. R. A. 280, 65 Am. St. Rep. 653. *In re McKennan*, 25 S. D. 369, 126 N. W. 611, 614, citing *Knowlton v. Moore*, 178 U. S. 41, 20 S. Ct. 747 (reversed 130 N. W. 33). *Mager v. Grima*, 9 How. 490.

The court suggests that *Knowlton v. Moore*, 178 U. S. 41, 20 S. Ct. 747, virtually overruled the *Magoun* case, 170 U. S. 283, 18 S. Ct. 594, and laid down the rule that the fact that the state has a right to control the transmission of property by devise or succession has nothing whatever to do with the power of the state to tax transmission of property. *In re McKennan*, 25 S. D. 369, 126 N. W. 611, 619 (reversed 130 N. W. 33). As to the nature of the tax see further, *ante*, s. 7 *et seq.*

<sup>3</sup> *In re Magnes*, 32 Colo. 527, 77 P. 853.

## Sec. 29. Power of State to Regulate or Prohibit Devolution on Death.

The state is commonly held to have plenary power to regulate descent, to tax it, or even to prohibit it altogether,<sup>1</sup> as the right of succession on death is the creature of law and not a natural right.<sup>2</sup> This doctrine has the best historical foundation and has been ably set forth in the following language, which has been repeatedly quoted with approval:—

"The right to take property by devise or descent is the creature of the law and secured and protected by its authority. The legislature might, if it saw proper, restrict the succession to a decedent's estate, either by devise or descent to a particular class of his kindred, say to his lineal descendants and ascendants; it might impose terms and conditions upon which collateral relations may be permitted to take it; or it may tomorrow, if it pleases, absolutely repeal the statute of wills and that of descents and distributions and declare that, upon the death of a party, his property shall be applied to the payment of his debts, and the residue appropriated to public uses. Possessing this sweeping power over the whole subject, it is difficult to see upon what ground its right to appropriate a modicum of the estate, call it a tax or what you will, as the condition upon which those who take the estate shall be permitted to enjoy it, can be successfully questioned."<sup>3</sup>

A more recent statement of this doctrine by our highest tribunal is as follows: "While the laws of all civilized states recognize in

every citizen the absolute right to his own earnings, and to the enjoyment of his own property, and the increase thereof, during his life, except so far as the state may require him to contribute his share for public expenses, the right to dispose of his property by will has always been considered purely a creature of statute and within legislative control. 'By the common law, as it stood in the reign of Henry II, a man's goods were to be divided into three equal parts, of which one went to his heirs or lineal descendants, another to his wife, and a third was at his own disposal; or if he died without a wife, he might then dispose of one moiety, and the other went to his children; and so, *e converso*, if he had no children, the wife was entitled to one moiety, and he might bequeath the other, but if he died without either wife or issue, the whole was at his own disposal.' 2 Bl. Com. 492. Prior to the statute of wills, enacted in the reign of Henry VIII, the right to a testamentary disposition of the property did not extend to real estate at all, and as to personal estate, was limited as above stated. Although these restrictions have long since been abolished in England, and never existed in this country, except in Louisiana, the right of a widow to her dower and to a share in the personal estate is ordinarily secured to her by statute.

"By the Code Napoleon, gifts of property, whether by acts *inter vivos* or by will, must not exceed one-half the estate if the testator leave but one child; one-third if he leaves to children; one-fourth if he leaves three or more. If he have no children, but leaves ancestors, both in the paternal and maternal line, he may give away but one-half of his property, and but three-fourths if he have ancestors in but one line. By the law of Italy, one-half a testator's property must be distributed equally among all his children; the other half he may leave to his eldest son or to whomsoever he pleases. Similar restrictions upon the power of disposition by will are found in the codes of other continental countries, as well as in the state of Louisiana. Though the general consent of the most enlightened nations, has, from the earliest historical period, recognized a natural right in children to inherit the property of their parents, we know of no legal principle to prevent the legislature from taking away or limiting the right of testamentary disposition or imposing such conditions upon its exercise as it may deem conducive to public good."<sup>4</sup>

The following language is also enlightening:—

"The right of inheritance including the designation of heirs and the proportions which the several heirs shall receive, as well as the

right of testamentary disposition, are entirely matters of statutory enactment, and within the control of the legislature. As it is only by virtue of the statute that the heir is entitled to receive any of his ancestor's estate, or that the ancestor can divert his estate from the heir, the same authority which confers this privilege may attach to it the condition that a portion of the estate so received shall be contributed to the state, and the portion thus to be contributed is peculiarly within the legislative discretion."<sup>5</sup>

On the other hand a few courts have laid down the proposition that while a state may regulate or alter laws of succession on death, it cannot entirely abolish the right of succession by inheritance or bequest.<sup>6</sup>

The Massachusetts court has said:—

"The descent or devolution of property on the death of the owner in England and in this country has always been regulated by law."

"The legislature cannot so far restrict the right to transmit property by will or by descent as to amount to an appropriation of property generally, . . . it cannot impose a tax which shall be equivalent, or almost equivalent, to the value of the property, and cannot so limit the persons who can take as heirs, devisees, distributees or legatees that the great mass of all the property of the inhabitants must become vested in the commonwealth by escheat. The state can take property by taxation only for the public service, and we assume that its right to take property, if any exists, by regulating the distribution of it on the death of the owner, is limited in the same manner, and that this right must be exercised in a reasonable way."<sup>7</sup>

The last word on the subject has been uttered by the supreme court of Wisconsin which, speaking of the prevailing doctrine, remarks that the unanimity with which the proposition is stated is only equaled by the paucity of reasoning by which it is supported, and says that the declaration of the court of North Carolina seems to have reached the logical goal toward which the other cases only tend, namely, the denial of all natural rights of property. It comes perilously near the doctrine that might makes right.

The court quotes from Mr. Justice Brown, *United States v. Perkins*, 163 U. S. 625, 16 Sup. Ct. 1073, where he says:—

"The general consent of the most enlightened nations has from the earliest historical period recognized a natural right in children to inherit the property of their parents."

The court notices the difference between our theory of government that political rights flow from the people and the medieval theory that political rights flow from the crown, and remarks that this difference makes the European cases of no value in this country. The court remarks after discussion:—

"So clear does it seem to us from the historical point of view that the right to take property by inheritance or will has existed in some form among civilized nations from the time when the memory of man runneth not to the contrary, and so conclusive seems the argument that these rights are a part of the inherent rights which governments, under our conception, are established to conserve, that we feel entirely justified in rejecting the dictum so frequently asserted by such a vast array of courts that these rights are purely statutory and may be wholly taken away by the legislature.

"It is true that these rights are subject to reasonable regulation by the legislature; lines of descent may be prescribed, the persons who can take as heirs or devisees may be limited, collateral relatives may doubtless be included or cut off, the manner of the execution of wills may be prescribed, and there may be much room for legislative action in determining how much property shall be exempted entirely from the power to will so that dependents may not be entirely cut off. These are all matters within the field of regulation. The fact that these powers exist and have been universally exercised affords no ground for claiming that the legislature may abolish both inheritances and wills, turn every fee-simple title into a mere estate for life, and thus in effect confiscate the property of the people once every generation."<sup>8</sup>

We venture to suggest that the attitude of the majority of our courts is more historical than sensible, that no court in this country has ever actually upheld the state in appropriating all the property of a decedent for taxation, and we doubt if any court ever will approve of such an outrage in time of peace.

Such proceedings may have historical sanction, but are utterly out of tone with the modern theory of the sanctity of private property.

We are of opinion that when, for example, the confiscatory law of Oklahoma is tested in a flagrant case, no line of dicta, however respectable, will prevent our courts from doing justice as between the state and its citizens. Our supreme court has intimated the possibility of such an attitude.<sup>9</sup>

<sup>1</sup> *In re Inheritance Tax*, 23 Colo. 492, 48 P. 535.



\* *In re Magnes*, 32 Colo. 527, 77 P. 853. *Kochersperger v. Drake*, 167 Ill. 122, 47 N. E. 321, 41 L. R. A. 446. *In re Speed*, 216 Ill. 23, 27, 74 N. E. 809, 108 Am. St. Rep. 189, affirmed 203 U. S. 553, 27 S. Ct. 171, 51 L. Ed. 314. *Booth v. Commonwealth*, 130 Ky. 88, 113 S. W. 61. *Curry v. Spencer*, 61 N. H. 624, 60 Am. St. Rep. 337. *In re Howard*, 5 Dem. Surr. (N. Y.) 483. *Pullen v. Commissioners*, 66 N. C. 361. *In re Morris*, 138 N. C. 259, 50 S. E. 682. *State v. Allston*, 94 Tenn. 674, 30 S. W. 750, 28 L. R. A. 178. *In re Joyclin*, 76 Vt. 88, 564, 281. *State v. Clark*, 30 Wash. 439, 71 P. 20.

**The rule stated.** "The constitution guarantees to the citizen the right of acquiring, possessing and protecting property, Article 1, section 1, which includes also the right of disposal. But the guaranty ceases to operate at the death of the possessor. There is no provision of our constitution, or that of the United States, which secures the right to any one to control or dispose of his property after his death, nor the right to any one, whether kindred or not, to take it by inheritance. Descent is a creature of statute, and not a natural right. 2 Blackstone's Com., pp. 10, 11, 12, 13; *Strode v. Com.*, *supra*. At common law, prior to the statute of distribution in England, 22 and 23 Car. 11, descent of personal property could hardly be recognized, and even after the statute requiring administration to be granted, the administrator, after the payment of the debts and funeral expenses of the deceased, was entitled to retain to himself the residue of his effects, the court holding that there was no power to compel a distribution. 2 Bl. Com. 515; *Edwards v. Freeman*, 2 P. Wms. 442. *Per Strout, J.*, in *State v. Hamlin*, 86 Me. 495, 504, 30 A. 76, 25 L. R. A. 632.

**Blackstone.** "The most universal and effectual way of abandoning property, is by the death of the occupant; when, both the actual possession and intention of keeping possession ceasing, the property which is founded upon such possession and intention ought also to cease of course. For, naturally speaking, the instant a man ceases to be, he ceases to have any dominion; else, if he had a right to dispose of his acquisitions one moment beyond his life, he would also have a right to direct their disposal for a million of ages after him; which would be highly absurd and inconvenient. All property must therefore cease upon death, considering men as absolute individuals, and unconnected with civil society: for, then, by the principles before established, the next immediate occupant would acquire a right in all that the deceased possessed. But as, under civilized governments, which are calculated for the peace of mankind, such a constitution would be productive of endless disturbances, the universal law of almost every nation (which is a kind of secondary law of nature) has either given the dying person a power of continuing his property, by disposing of his possessions by will; or, in case he neglects to dispose of it, or is not permitted to make any disposition at all, the municipal law of the country then steps in, and declares who shall be the successor, representative, or heir of the deceased; that is, who alone shall have a right to enter upon this vacant possession, in order to avoid that confusion which its becoming again common would occasion. And further, in case no testament be permitted by the law, or none be made, and no heir can be found so qualified as the law requires, still, to prevent the robust title of occupancy from again taking place, the doctrine of escheats is adopted in almost every country; whereby the sovereign, of the state, and those who claim under his authority, are the ultimate heirs, and succeed to those inheritances to which no other title can be formed.

"The right of inheritance, or descent to the children and relations of the deceased, seems to have been allowed much earlier than the right of devising by testament. We are apt to conceive at first view that it has nature on its side; yet we often mistake for nature what we find established by long and inveterate custom. It is certainly a wise and effectual, but clearly a political, establishment; since the permanent right of property, vested in the ancestor himself, was no natural, but merely a civil, right.

"With us in England, till modern times, a man could only dispose of one-third of his movables from his wife and children; and, in general, no will was permitted of lands till the reign of Henry the Eighth; and then only of a certain portion: for it was not till after the restoration that the power of devising real property became so universal as at present.

"Wills, therefore, and testaments, rights of inheritance and successions, are all of them creatures of the civil or municipal laws, and accordingly are in all respects regulated by them; every distinct country having different ceremonies and requisites to make a testament completely valid: neither does anything vary more than the right of inheritance under different national establishments." Vol. 2, Blackstone's Commentaries 10.

<sup>2</sup> *Per Lee, J., in Eyre v. Jacob*, 14 Gratt. (Va.) 422, 430, 73 Am. Dec. 367.

<sup>4</sup> *Per Brown, J., in United States v. Perkins*, 163 U. S. 625, 627, quoted with approval in *Magoun v. Illinois Trust & Savings Bank*, 170 U. S. 283, 290.

<sup>5</sup> *Per Harrison, J., in In re Wilmerding's Estate*, 117 Cal. 281, 284, 49 P. 181.

<sup>6</sup> *Nunnemacher v. State*, 129 Wis. 190, 108 N. W. 627.

The court intimates no favorable opinion upon the proposition laid down by the Virginia court in *Eyre v. Jacob*, 14 Gratt. 430. *Black v. State*, 113 Wis. 205 216, 89 N. W. 522, 90 Am. St. Rep. 853.

<sup>7</sup> *Per Field C. J., in Minot v. Winthrop*, 162 Mass. 113, 117, 26 L. R. A. 259.

The same court had earlier said: "The power to dispose of property by will is neither a natural nor a constitutional right, but depends wholly upon statute, and may be conferred taken away or limited and regulated in whole or in part, by the legislature." *Bretton v. Fox*, 100 Mass. 234 (applied to widow's share in her husband's estate).

A note in 8 *Harvard Law Review*, p. 226, criticizes adversely the attitude of the court in *Minot v. Winthrop*, 162 Mass. 113, 38 N. E. 512, 26 L. R. A. 259, to the effect that the state has no authority to take away altogether the inheritable quality of property. The editor suggests that this statement is a dictum and that the only necessary incident of private property is that there be a succession of some kind on the death of the owner. Who shall succeed is quite a different question. It has been answered differently at different times and places.

<sup>8</sup> *Nunnemacher v. State*, 129 Wis. 190, 202, 108 N. W. 627, 9 L. R. A. N. S. 121.

<sup>9</sup> *Knowlton v. Moore*, 178 U. S. 41, 109, 20 S. Ct. 747, 44 L. Ed. 969.

### Sec. 30. Power of Congress.

The federal congress has power to lay an inheritance tax notwithstanding the devolution of property is solely in the jurisdiction of the state.<sup>1</sup>

When this question finally came squarely before the supreme court, it was claimed that as the transmission of property by death is exclusively subject to the regulating authority of the several states, therefore the levy by congress of a tax on inheritances of any kind is beyond the power of congress and is interference by the national government with a matter which falls alone within the reach of state legislation. The court states, however, that transmission of property is a usual subject of taxation and that the taxing power of congress extends to all usual objects of taxation subject to the limitations in the constitution.

The court points out that it is a fallacy to assume that the tax on the transmission or receipt of property occasioned by death is imposed on the exclusive power of the state to regulate the devolution of property upon death. The subject of taxation is the transmission or receipt, not the right existing to regulate.

The court points out that under the American constitutional system both the national and the state governments moving in their respective orbits have a common authority to tax many and diverse objects, but this does not cause the exercise of its lawful attributes by one to be a curtailment of the powers of government of the other.<sup>2</sup>

<sup>1</sup> *Knowlton v. Moore*, 178 U. S. 41, 59, 60, 20 S. Ct. 747, 44 L. Ed. 969.

It was suggested in the argument of *Frederickson v. Louisiana* that the government of the United States is incompetent to regulate testamentary dispositions or laws of inheritance of foreigners in reference to property within the states. The court observes that the question is one of great magnitude and declines to consider it in that case. *Frederickson v. State*, 23 How. (U. S.) 445. The court had also held that inheritance taxes are not direct taxes, but excises or duties, and as such within the authority of congress to lay and collect without apportionment among the states. *Scholey v. Rew*, 23 Wall. 331.

<sup>2</sup> *Knowlton v. Moore*, 178 U. S. 41, 60, 20 S. Ct. 747, 44 L. Ed. 969.

### Sec. 31. Power of Municipalities.

Municipalities have no authority to levy an inheritance tax unless expressly conferred.

The collateral inheritance tax is not in a proper legal sense a tax upon property, but is a premium demanded for the privilege of transmitting an estate and the imposition of such a tax is a power inherent in the legislature in the absence of express constitutional prohibition. The legislature has the power to confer on municipal corporations the right to levy an inheritance tax, but such power cannot be inferred from the legislative authority unless such appears to be the clear legislative intent. *Schoolfield v. Lynchburg*, 78 Va. 366, 372.

The authority to towns under the Virginia Code of 1904, section 1043, to levy taxes allows the tax to be levied "upon any property therein, and upon such other subject as may at that time be assessed with state taxes against persons residing therein." The town charter provides that the council "may raise taxes annually by assessments in said town on all subjects taxable by the state."

The court holds, however, that the section of the code and the town charter apply only to the ordinary annually recurring tax on property and other subjects of taxation, and not to sporadic subjects which, though connected with the transmission and enjoyment of property, are casual in their nature and not recurrent. The court notes further that a collateral inheritance tax is not in any proper sense a tax on property. *Wytheville v. Johnson*, 108 Va. 589, 62 S. E. 328, 18 L. R. A. N. S. 960.

## CHAPTER VIII.

### CONSTRUCTION OF STATUTES.

§ 32. Strict Construction.—Executive Practice.

§ 33. Effect of Amendment.

§ 34. Construction of Statute Copied from Another Jurisdiction.

#### Sec. 32. Strict Construction.—Executive Practice.

The inheritance tax is to be strictly construed in favor of the taxpayer, who has a right to claim that he shall be clearly brought within its terms before being subjected to it, as it is a special burden or tax.<sup>1</sup> Even words of exception confining the operation of the tax should receive a liberal construction,<sup>2</sup> while any particular exemption from it should be construed in favor of the state.<sup>3</sup>

The construction adopted by executive officers in administering an inheritance tax is immaterial unless the true construction of the law is doubtful.<sup>4</sup>

<sup>1</sup> *In re Enston*, 113 N. Y. 174, 178, 21 N. E. 87, 3 L. R. A. 464, 22 N. Y. St. 569, reversing 46 Hun 506, 19 Abb. N. Cas. 227, 10 N. Y. St. 380, 5 Dem. Surr. 93, 8 N. Y. St. 781. *In re Vassar*, 127 N. Y. 1, 12, 27 N. E. 394, reversing 58 Hun 378, 12 N. Y. Suppl. 203. *In re Stewart*, 131 N. Y. 274, 282, 30 N. E. 184, 14 L. R. A. 836. *Eidman v. Martinez*, 184 U. S. 578, 583, 22 Sup. Ct. 515, 46 L. Ed. 697.

**The Rule of Reasonable Construction.** The rule of strict construction ordinarily applied to the operation and effect of statutes on taxation and to proceedings thereunder does not apply to inheritance taxes. The statute must be given a fair and reasonable construction. *State v. Basille*, 97 Minn. 11, 106 N. W. 93, 6 L. R. A. N. S. 732.

<sup>2</sup> "It is an old and familiar rule of the English courts, applicable to all forms of taxation, and particularly special taxes, that the sovereign is bound to express its intention to tax in clear and unambiguous language, and that a liberal construction be given to words of *exception* confining the operation of duty, . . . though the rule regarding *exemptions* from general laws imposing taxes may be different." *Per* Brown, J., in *Eidman v. Martinez*, 184 U. S. 578, 583, 22 Sup. Ct. 515, 46 L. Ed. 697, where the court quotes as sustaining its doctrine *In re Howell's Estate*, 147 Pa. St. 164, 23 A. 403, *In re Cager*, 111 N. Y. 343, 18 N. E. 866, *Knowlton v. Moore*, 178 U. S. 41, 20 Sup. Ct. 747, 44 L. Ed. 969.

<sup>3</sup> *In re Hickock*, 78 Vt. 259, 62 A. 724. Where a particular subject is within the scope of the law and an exemption from taxation is claimed on the ground that the legislature has not provided proper machinery for accomplishing the legislative purpose in a particular instance a liberal rather than a strict construc-

tion should be applied, and if by fair and reasonable construction of its provisions the purpose of the statute can be carried out, that interpretation ought to be given to effectuate the legislative intent. *In re Stewart*, 131 N. Y. 274, 282, 30 N. E. 184, 14 L. R. A. 836, affirming.

*Attorney General v. Barney*, 211 Mass.—, 95 N. E. 750.

See further, *post*, s. 241, as to construction of exemptions.

### Sec. 33. Effect of Amendment.

The fact that a statute was amended by extending it over a certain subject or situation is some evidence that prior thereto it did not include such property.

The fact that the New York statute of 1887, c. 713, amended the New York statute of 1885, c. 483, s. 1, so as to subject to its operation the property within the state of a non-resident decedent, furnishes some evidence that prior thereto the proper construction of the section did not include such property within its operation. *In re Enston*, 113 N. Y. 174, 183, 21 N. E. 87, 3 L. R. A. 464, 22 N. Y. St. 569, reversing 46 Hun 506, 19 Abb. N. Cas. 227, 10 N. Y. St. 380, 5 Dem. Surr. 93, 8 N. Y. St. 781.

### Sec. 34. Construction of Statute Copied from another Jurisdiction.

The general rule applies to inheritance laws that where a statute is adopted from another state it will be presumed that the legislature intended it to receive the construction given by the courts of that state if it had been previously construed, unless in conflict with the spirit and policy of the laws of the second state.

*People v. Griffith*, 245 Ill. 532, 92 N. E. 313. *Black v. State*, 113 Wis. 205, 211, 89 N. W. 522, 90 Am. St. Rep. 853. *State v. Bullen*, 143 Wis. 512, 520, 128 N. W. 109. Statutes copied from another jurisdiction, see *ante*, s. 16.

## CHAPTER IX.

### VALIDITY IN GENERAL.

- § 35. Certainty.
- § 36. Laws Upheld and Avoided.
- § 37. Statutes Void in Part Only.
- § 38. Confiscatory Legislation.
- § 39. Public Purpose.
- § 40. Validity of Appropriation to Special Fund.
- § 41. Assigning to Probate Courts the Duty of Collection.
- § 42. Omission of Provisions for Collection.
- § 43. Proceedings to Test Validity.
- § 44. Who may Attack Validity.

#### Sec. 35. Certainty.

The inheritance tax acts may be void for uncertainty.

*State v. Vinsonhaler*, 74 Neb. 675, 105 N. W. 472, *semble*.

It was pointed out that N. Y. St. 1885, c. 483, contains many imperfections and that there would be great embarrassment and difficulty in executing the act in the cases of contingent remainders and expectant estates. But the court holds that this is no reason for condemning the entire act. *In re McPherson*, 104 N. Y. 306, 324, 10 N. E. 685, 58 Am. Rep. 502.

#### Sec. 36. Laws Upheld and Avoided.

The inheritance taxes in this country have usually been upheld,<sup>1</sup> but have been held unconstitutional under state constitutions in the cases cited.<sup>2</sup>

<sup>1</sup>See, for example, *Appeal of Hopkins*, 77 Conn. 644, 60 A. 657. *Minot v. Winthrop*, 162 Mass. 113, 115, 25 L. R. A. 259. *Crocker v. Shaw*, 174 Mass. 266. *State v. Probate Court*, 112 Minn. 279, 128 N. W. 18, 19. *In re Kimberly*, 27 N. Y. App. Div. 470, 50 N. Y. Suppl. 586.

<sup>2</sup>*Chambe v. Judge*, 100 Mich. 112. *State v. Gorman*, 40 Minn. 232. *Drew v. Tift*, 79 Minn. 175. *State v. Basille*, 87 Minn. 500. *State v. Harvey*, 90 Minn. 180. *State v. Switsler*, 143 Mo. 316. *Curry v. Spencer*, 61 N. H. 624, 60 Am. St. Rep. 337. *State v. Ferris*, 53 Ohio St. 314. *In re Cope*, 191 Pa. St. 1, 70 Am. St. Rep. 749, 45 L. R. A. 316. *State v. Mann*, 76 Wis. 469. *Black v. State*, 113 Wis. 205.

The supreme court remarks that *Curry v. Spencer* is an extreme decision put on the basis of the rigid uniformity of the constitution of the state. In *State v. Mann* and *State v. Gorman*, the distinction between a tax on successions and one on property was not necessary to be observed. *State v. Gorman*, however,

may be claimed as deciding that a tax based on the value of the estates is contrary to the rule of equality; also that exemptions are. *State v. Ferris* and *State v. Switzler* do not oppose the principles upon which inheritance taxes are sustained, but only decide that the statutes passed on were repugnant to equality and uniformity of taxation as prescribed by the state constitutions. They are authority against the Illinois statute. *Magoun v. Illinois Trust & Savings Bank*, 170 U. S. 283, 291, 18 Sup. Ct. 594, 42 L. Ed. 1037.

### Sec. 37. Statutes Void in Part Only.

The unconstitutional portion of an inheritance statute may well be so separated from the balance that the act may be void only in part,<sup>1</sup> but one rate of taxation cannot be valid so far as allowed by law and void as to the excess.<sup>2</sup>

<sup>1</sup> *Union Trust Co. v. Durfee*, 125 Mich. 487, 84 N. W. 1101, 7 Detroit Leg. N. 597, purpose void.

The suggestion that the New York statute is unconstitutional as providing a different rate of taxation for different classes of relatives even if tenable could not render the statute void in entirety. *In re Keeney*, 194 N. Y. 281, 286, 87 N. E. 428, affirming 128 N. Y. App. Div. 893.

**Void in Part.** Where the Ohio statute of 1906 provided for the repeal of the Ohio inheritance law "except as to estates in which the inventory has already been filed at the date of the passage of this act," and where this exception was void, the court holds that the whole act need not be declared unconstitutional as the title of the act does not leave room for even suspicion that the exception was an inducement to the repeal; and the two objects of the act may well be taken separately. *Friend v. Levy*, 76 Ohio St. 26, 50, 80 N. E. 1036.

The unconstitutionality of the clause in the Cal. St. 1897, c. 83, exempting certain resident relatives from tax, does not render the entire provision for exemption void. It is evident that the legislature intended the exemption to apply to resident relatives and the intention of the legislature not to exempt non-residents of the same degree of relationship fails and therefore residents and non-residents are both exempted as provided by the original intention. *In re Stanford's Estate*, 54 P. 259, reversed on another point in 126 Cal. 112, 58 P. 462, 45 L. R. A. 788.

<sup>2</sup> Where the Minnesota act of 1902 provided for a tax of ten per cent, while the constitution only allowed five per cent to be levied, the claim was made that the greater includes the less and that a ten per cent tax included a five per cent tax and that therefore the statute might be upheld as imposing a tax valid to the extent of five per cent. The court, however, finds that the rate of taxation and the whole thereof ordained by the legislature is absolutely void and the statute is in legal effect one in which the rate of taxation as to collateral heirs and other parties is left blank. Such being the case the court has no more power to fill by construction the blank in the statute by reading into it a rate of taxation which will be within the limitation of the constitution than it has to decree an inheritance tax in advance of any legislation on the subject. It was urged that the tax as to lineal heirs is within the constitutional limitation and is separate and distinct from the tax as to the collateral heirs and that there-



fore the statute might be sustained as to lineals. The court replies to this claim that any such statute would be unconstitutional, as all must be taxed or none, quoting *Drew v. Tift*, 79 Minn. 175, 81 N. W. 839, 47 L. R. A. 525, 79 Am. St. Rep. 446. *State v. Harvey*, 90 Minn. 180, 95 N. W. 764.

### Sec. 38. Confiscatory Legislation.

The supreme court has suggested the possibility of avoiding a confiscatory tax on broad grounds, but no statute has yet been held void merely for that reason.

*Knowlton v. Moore*, 178 U. S. 41, 100, 20 S. Ct. 747, 44 L. Ed. 969.

*Cf. State v. Mann*, 76 Wis. 469, 474, 45 N. W. 526, 46 N. W. 51, where the court remarks that the tax if regarded as a probate fee may be so large as to shock the good sense of everybody.

As to confiscatory rates see further, *post*, s. 70.

### Sec. 39. Public Purpose.

An inheritance tax may be void as not for a public purpose. The Missouri statute of 1895, for example, levied an inheritance tax for the purpose of an endowment for the state university and further to be paid to students "while attending the university for defraying the expenses of such attendance" in what was known as the state university scholarship fund. It was argued that this was no different from providing free tuition at the state university. But the court says that it is one thing to provide for the establishment and maintenance of a system of public education and a wholly different thing to support private individuals who attend a university and public schools by public taxation; and the court concludes that the tax is levied for a purely private purpose and for that reason is in contravention of the constitution of Missouri.<sup>1</sup>

The Wisconsin constitution provides that "the legislature shall impose a tax on all civil suits commenced or prosecuted in the municipal inferior or circuit courts, which shall constitute a fund to be applied toward the payment of the salary of the judges." Wis. St. 1889, c. 176, cannot be sustained under this section, as the fund thereby raised is not restricted to the payment of the salary of judges.<sup>2</sup>

The Michigan statute of 1893 was held totally void on account of its failure to follow the constitutional requirement that all specific state taxes shall be applied in paying certain debts,<sup>3</sup> while the act of 1899 was only void in so far as it directed the appli-

cation of the proceeds.<sup>4</sup> The fact that the object is a public purpose will not aid an unconstitutional statute.<sup>5</sup>

<sup>1</sup>*State v. Switzer*, 143 Mo. 287, 326, 45 S. W. 245, 40 L. R. A. 280, 65 Am. St. Rep. 653; followed in *Simmons Medicine Co. v. Ziegenhein*, 145 Mo. 368, 47 S. W. 10.

<sup>2</sup>*State v. Mann*, 76 Wis. 469, 477, 45 N. W. 526, 46 N. W. 51.

<sup>3</sup>*Chambe v. Durfee*, 100 Mich. 112, 58 N. W. 661.

<sup>4</sup>*Union Trust Co. v. Durfee*, 125 Mich. 487, 84 N. W. 1101, 7 Detroit Leg. N. 597.

<sup>5</sup>As the New Hampshire act of 1878 is unconstitutional, the fact that its object was "to defray the cost of probate courts" is not entitled to any weight because the constitutional rule of equality cannot be limited or qualified by any consideration of expediency or convenience. The purpose of the act cannot change its character in this respect. *Curry v. Spencer*, 61 N. H. 624, 631, 60 Am. St. Rep. 337.

#### Sec. 40. Validity of Appropriation to Special Fund.

The Missouri constitution provides that all revenue in money received by the state shall go into the treasury and that all appropriations shall be made in the order set forth in the section. It was argued that this means that all revenue shall go into one common general fund unfettered and unpledged and that these words prohibit the creation of any special fund in the treasury to be supplied out of revenue provided by the general assembly; and that therefore the Missouri act of 1899, which provided that the receipts from the inheritance tax should be accredited to the "State Seminary moneys," was rendered void. The court replies that the constitution itself provides elsewhere for special funds and holds that the constitution simply requires the general assembly to proceed in the order designated in passing its appropriation bills. In prescribing the order for the passage of the appropriation bill there was no intention to create special liens upon the money in the treasury or give any priority of payment to one appropriation over another.

It was contended that the act of 1899, which provides that the receipts from the inheritance tax law shall be appropriated to the state university, is itself an appropriation of the money, as every dollar raised thereby is instantly and perpetually appropriated to the maintenance of the university. The court replies that the statute itself forbids expenditure save in pursuance of regular appropriations of the general assembly.

*State v. Henderson*, 160 Mo. 190, 211, 213, 60 S. W. 1093.

### **Sec. 41. Assigning to Probate Courts the Duty of Appraisal and Collection.**

It is proper to assign to the probate courts the duty of collecting the tax. Such duties are necessarily incident to the settlement of the estates and may be properly performed by the judge of probate.<sup>1</sup>

It was claimed that Wisconsin statute of 1903, c. 44, is unconstitutional because it commits the appraisal of property and the fixing of the amount of the tax to the county court, and these are claimed to be administrative and not judicial duties. The court replies that this is not so, that the court simply determines in a judicial way certain facts necessary to be ascertained to determine how much the tax fixed by the law amounts to in a given case. These duties are judicial in their character and very properly entrusted to the county court in which the estate is being administered.<sup>2</sup>

<sup>1</sup> *Union Trust Co. v. Durfee*, 125 Mich. 487, 84 N. W. 1101, 7 Detroit Leg. N. 597, quoting *State v. Gloucester Circuit Judge*, 50 N. J. L. 585, 611, 15 A. 272, 1 L. R. A. 86. See further, *post*, s. 325, 377.

<sup>2</sup> *Nunnemacher v. State*, 129 Wis. 190, 223, 108 N. W. 627, 9 L. R. A. N. S. 121.

### **Sec. 42. Omission of Provisions for Collection.**

An omission from the act of any machinery to collect the taxes due under it does not render it invalid.<sup>1</sup> Where the act clearly creates a liability on the part of recipients of inherited estates to pay the amount of any tax to the county treasurer for the use of the state, there is no reason why the county treasurer might not maintain an ordinary action based upon the liability that thus is created to pay, against the beneficiaries to recover the tax for the use of the state.<sup>2</sup>

<sup>1</sup> *Neilson v. Russell* (N. J. 1908) 76 N. J. L. 27, 42, 69 A. 476, 482, reversed on another ground in 76 N. J. L. 655, 71 A. 286. See further, *post*, s. 396.

<sup>2</sup> *In re McKennan*, (S. D.) 130 N. W. 33, reversing judgment on rehearing in 25 S. D. 369, 126 N. W. 611.

### **Sec. 43. Proceedings to Test Validity.**

Proceedings to test the validity of inheritance tax statutes depend on local practice, and are commonly brought up by prohibition<sup>1</sup> or by certiorari,<sup>2</sup> or quo warranto<sup>3</sup> or possibly by injunction,<sup>4</sup> or mandamus may be brought against the court to compel it to assess the tax.<sup>5</sup>

<sup>1</sup>*Chambe v. Durfee*, 100 Mich. 112, 58 N. W. 661. *Union Trust Co. v. Durfee*, 125 Mich. 487, 84 N. W. 1101, 7 Detroit Leg. N. 597.

<sup>2</sup>*State v. Henderson*, 160 Mo. 190, 60 S. W. 1093. *State v. District Court*, 41 Mont. 357, 109 P. 438.

<sup>3</sup>*State v. Guilbert*, 70 Ohio St. 229, 225, 71 N. E. 636.

<sup>4</sup>*Eyre v. Jacob*, 14 Gratt. (Va.) 422, 73 Am. Dec. 367, where the propriety of injunction was not questioned.

<sup>5</sup>*State v. Basille*, 97 Minn. 11, 106 H. W. 93, 6 L. R. A. N. S. 732.

#### Sec. 44. Who May Attack Validity.

Only those can attack the validity of an inheritance tax who would be benefited by its invalidity. So grantees in a deed subject to the lowest rate of taxation have no valid cause of complaint as to the constitutionality of the transfer tax because other grantees are subjected to a higher rate. That objection, if tenable, could be taken only by the grantees taxed at the higher rate.<sup>1</sup>

The contention that the California statute of 1905, c. 314, is unconstitutional as discriminating between the citizens of the state and those of other states will not be considered where it does not appear by the pleadings to which class the appellant belongs.<sup>2</sup>

Where the devisee of real estate is an alien, and has received the value of the real estate in partition proceedings, he is estopped to deny liability for the succession tax on the ground that the devise to him as an alien was void.<sup>3</sup>

<sup>1</sup> *In re Keeney*, 194 N. Y. 281, 286, 87 N. E. 428, affirming 128 N. Y. App. Div. 893.

<sup>2</sup> *In re Damon*, 10 Cal. App. 542, 102 P. 684.

<sup>3</sup> *Scholey v. Rew*, 90 U. S. (23 Wall.) 331, 23 L. R. A. 99.

## CHAPTER X.

### VARIOUS CONSTITUTIONAL LIMITATIONS.

- § 45. The State Constitutions.
- § 45a. Impairment of Contract.
- § 46. Constitutional Limitation in Rate.
- § 47. Justice to be Free.
- § 48. Poll Tax Prohibited.
- § 49. Void as in Addition to Annual Property Tax.
- § 50. Must Cover both Realty and Personalty.
- § 51. Local or Special Laws.
- § 52. Title to be Expressed.
- § 53. Revenue Legislation to Originate in House of Representatives.

#### Sec. 45. The State Constitutions.

While most states require equality and uniformity in taxation,<sup>1</sup> inheritance taxes are specifically referred to in only five states.<sup>2</sup>

<sup>1</sup>As to equality and uniformity, see Chapter XI. For the clauses in the state constitutions bearing on inheritance taxes, see the second part of this book.

<sup>2</sup>Alabama, Louisiana, Minnesota, New Hampshire, Oklahoma. See also the proposed constitutions of Arizona and Indiana. See *In re Fox*, 154 Mich. 5, 117 N. W. 558, 15 Detroit Leg. N. 674. See also *Drew v. Tift*, 79 Minn. 175, 81 N. W. 839, 47 L. R. A. 525, 79 Am. St. Rep. 446.

#### Sec. 45a. Impairment of Contract.

No collateral inheritance tax has yet been held to impair any contract right under any circumstances. The subject was adverted to in the supreme court in a decision holding that where the law imposing a tax on deposits was in force before the deposit was made by a non-resident in the state of New York, it did not impair the obligation of the contract, if a tax otherwise lawful ever can be said to have that effect.<sup>1</sup> The New York statute of 1885 did not create any contract right that a person dying while that statute was in force might dispose of his estate without any further tax except as then in existence. Therefore the statute of 1897 could tax powers of appointment which were not taxable under the statute of 1885.<sup>2</sup>

In an Iowa case the decedent before the passage of any inheritance law entered into an agreement for the disposition of certain

property on his death, which occurred after the law went into effect. The court considered the suggestion that as the contract was made before the passage of the collateral inheritance law this law cannot apply, for the reason that it impairs the obligations of a contract and deprives the collateral heirs of their property without due process of law. The court answers this suggestion showing that until the death of the devisee it was entirely unsettled as to who would get the property at the time of his death, as it depended on the survival of the collateral heirs. The time of possession and enjoyment was postponed until the death of the devisee and the estate of the original testator was still undistributed. It was therefore entirely competent for the legislature to impose a tax upon the right to receive in possession and enjoyment although the right was given by a contract.<sup>2</sup>

<sup>2</sup>*Blackstone v. Miller*, 188 U. S. 189, 23 S. Ct. 277, 47 L. Ed. 439, affirming 171 N. Y. 682, 69 N. Y. App. Div. 127, quoting *Pinney v. Nelson*, 183 U. S. 144, 147.

<sup>3</sup>*In re Vanderbilt*, 163 N. Y. 597, 57 N. E. 1127, 50 N. Y. App. Div. 246 63 N. Y. Suppl. 1079.

<sup>4</sup>*Lacy v. State Treasurer*, (Iowa, 1909,) 121 N. W. 179.

#### **Sec. 46. Constitutional Limitation in Rate.**

The tax may be void as at a rate prohibited by the constitution.

*State v. Harvey*, 90 Minn. 180, 95 N. W. 764.

#### **Sec. 47. Justice to be Free.**

Inheritance taxes in the form of heavy probate duties have been found invalid under constitutional provisions that justice must be obtained freely and without purchase.

*State v. Gorman*, 40 Minn. 232, 41 N. W. 948.

The Wisconsin statute of 1889, c. 176, purports to close the door of the county court against administrators and the estate unless they first advance and pay the amount exacted. This looks very much like purchasing the privilege of going into the county court for the settlement of the estate, but the court finds it unnecessary to determine that question. *State v. Mann*, 76 Wis. 469, 480, 45 N. W. 526, 46 N. W. 51.

#### **Sec. 48. Poll Tax Prohibited.**

An inheritance tax is not void under a constitution providing that "the levying of taxes by poll is grievous and oppressive and ought to be prohibited."

*Tyson v. Skile*, 28 Md. 577.

**Sec. 49. Void as in Addition to Annual Property Tax.**

In two states succession taxes cannot be sustained as property taxes, as they would be void as an additional tax beside the regular annual property tax and as such prohibited by the constitution.<sup>1</sup> Louisiana is the only state limiting the legislature by forbidding the imposition of an inheritance tax on property which has already borne its just proportion of taxes.<sup>2</sup>

<sup>1</sup>*State v. Switzler*, 143 Mo. 287, 330, 45 S. W. 245, 40 L. R. A. 280, 65 Am. St. Rep. 653. *State v. Mann*, 76 Wis. 469, 478, 45 N. W. 526, 46 N. W. 51.

<sup>2</sup>*Succession of Stauffer*, 119 La. Ann. 66, 43 S. 928, holding that this provision does not apply to taxes due and unpaid before the enactment of the constitution. To the same effect see *Succession of Westfeldt*, 122 La. Ann. 836, 48 S. 281. Other cases construing this clause are *Succession of Pritchard*, 118 La. Ann. 883, 43 S. 537; *Succession of Fell*, 119 La. Ann. 1037, 44 S. 879.

**Sec. 50. Must Cover both Realty and Personality.**

Under the Minnesota constitution an inheritance tax is void unless it applies to real as well as personal property,<sup>1</sup> but no such limitation is imposed by the federal constitution.<sup>2</sup>

<sup>1</sup>*Drew v. Tift*, 79 Minn. 175, 81 N. W. 839, 47 L. R. A. 525, 79 Am. St. Rep. 446. *State v. Basille*, 87 Minn. 500, 92 N. W. 415, 94 Am. St. Rep. 718.

<sup>2</sup>*Beers v. Glynn*, 211 U. S. 477, 483, 29 S. Ct. 186, 53 L. Ed. 290.

**Sec. 51. Local or Special Laws.**

Inheritance taxes are subject to constitutional restrictions against local or special laws.

*In re Stanford's Estate*, 126 Cal. 112, 58 P. 462, 45 L. R. A. 788. *In re Magnes*, 32 Colo. 527, 77 P. 853.

Wis. St. 1889, c. 176, is unconstitutional, as it provides for the imposition of a tax on certain estates only in counties having more than a certain population and the tax in question really applies only to one county and is further limited to a certain class of estates in that county. *State v. Mann*, 76 Wis. 469, 45 N. W. 526, 46 N. W. 51.

The Maryland statute of 1880, chapter 444, was not void on the ground that it was a release of taxes and that the constitution provides that the general assembly shall not pass any local or special laws of that character, as the release of debts or obligations to the state is a public general law not forbidden by the constitution. *Montague v. State*, 54 Md. 481.

**Sec. 52. Title to be Expressed.**

Inheritance taxes are commonly subject to constitutional provisions requiring the title to express the subject clearly,<sup>1</sup> although

the rule is otherwise in New York.<sup>2</sup> These clauses in constitutions require the title to cover the form of transfer,<sup>3</sup> and the property,<sup>4</sup> and the persons taxed,<sup>5</sup> and to point out new provisions in an amending act.<sup>6</sup> A requirement that the title shall distinctly state the object of the tax to which only it shall be applied has been held to clearly refer to the ordinary property tax which, at the time it is levied, can be levied with knowledge as to the probable amount of revenue that will be derived therefrom and can thus be well rendered to meet the uses to which the same shall be applied.<sup>7</sup>

<sup>1</sup> Colo. St. 1902, c. 3, called "an act in relation to public revenue," is not void as being too general in title, in view of the financial history of the state. *In re Magnes*, 32 Colo. 527, 77 P. 853.

The title of La. St. 1904, c. 45, is as follows: "To carry into effect articles 235 and 236 of the constitution of 1898 relative to inheritance taxes." The court holds that the title sufficiently suggests the object of the act and is therefore not void under La. Const. a. 31. *Succession of Levy*, 115 La. 378, 39 S. 37, affirmed in *Cohen v. Brewster*, 203 U. S. 552, 27 S. Ct. 174.

Objections to the title of Mo. St. 1895, were not considered by the court, which found the act void on other grounds. *State v. Switsler*, 143 Mo. 287, 331, 45 S. W. 245, 40 L. R. A. 280, 65 Am. St. Rep. 653.

<sup>2</sup>The provision of the constitution as to title did not apply to the inheritance tax, as it has no reference to special taxes which may be collected in a variety of ways under general laws. *In re McPherson*, 104 N. Y. 306, 319, 10 N. E. 685, 58 Am. Rep. 502.

<sup>3</sup>"Inheritances" covers succession by will. *In re White*, 42 Wash. 360, 84 P. 831.

<sup>4</sup>The New Jersey acts of 1892 and 1893 are void as to realty, as the title does not mention real estate, which defect was avoided in the act of 1894. *Grossman v. Hancock*, 58 N. J. L. 139, 32 Atl. 689; *Von Riper v. Heffenheimer*, 17 N. J. L. J. 49; *In re Dobermiller*, 17 N. J. L. J. 378.

<sup>5</sup>Where the title only mentions collateral inheritances the act is void so far as direct inheritances are concerned. Illegitimate children are clearly not collateral heirs, and therefore the act is void as to them. *Wirringer v. Morgan*, 12 Cal. App. 28, 106 P. 425.

**Reference to other Statutes and to Mortality Tables.** Mich. Const. a. 14, s. 14, provides that every tax law shall distinctly state the tax and the object to which it is to be applied; that it shall not be sufficient to refer to any other law to fix such a tax or object. Mich. St. 1899, c. 188, provides that the tax shall be imposed upon persons or corporations not exempt by law and the court holds that this is not in violation of the constitution. The court says that the tax is clearly defined and no other law referred to either to fix the tax or its object. It is imposed upon everybody who is not exempt. So the reference in s. 11 to mortality tables to ascertain the value of future interests does not change the rule of taxation or modify it, but only prescribes a rule of estimating the values and is valid within the constitution. *Union Trust Co. v. Durfee*, 125 Mich. 487, 84 N. W. 1101, 7 Detroit Leg. N. 597.



\*N. J. St. 1906 is entitled "An act to amend an act entitled 'An act to tax intestates and estates, gifts, legacies, devises and collateral inheritance in certain cases.'" The act of 1906 intended to substitute a tax on the transfer of property which is the subject of a legacy for a tax on the legacy itself. This purpose was not expressed in the title and the statute is therefore void as applied to New Jersey stocks belonging to a non-resident. *Dixon v. Russell*, 79 N. J. L. 490, 76 A. 982, reversing 78 N. J. L. 296, 73 A. 51.

The Pennsylvania statute of 1887, P. L. 79, is entitled "An act to provide for the better collection of collateral inheritance taxes." The court does not pass on whether this is a sufficient title as to cover new taxes imposed by the statute, but intimates that it is not. *In re Bittinger*, 129 Pa. St. 338, 18 A. 132. See also *Appeal of Commonwealth*, 127 Pa. St. 435, 440, 17 A. 1004.

<sup>1</sup>*In re McKennan*, 25 S. D. 369, 126 N. W. 611, 130 N. W. 33, citing with approval *Matter of McPherson*, 104 N. Y. 315, 10 N. E. 685.

### **Sec. 53. Revenue Legislation to Originate in House of Representatives.**

The Louisiana act of 1894 was attacked as being in conflict with Art. 35 of the constitution, which requires that all bills for raising a revenue and appropriating money shall originate in the house of representatives. The statute did originate in the senate and it was denied that the act was one raising revenues or appropriating money. It was claimed that the statute is a legal limitation upon the right of inheritance; that it simply fixes as a necessary condition for the existence of a capacity to receive by succession the payment of a certain sum. The court holds that the statute does not make the payment of the tax a condition precedent to a right of inheritance, but that the law permits a foreigner to inherit and, having so inherited, charges him with the payment of the tax, and that as such the legislation is revenue legislation and unconstitutional.

*Succession of Sala*, 50 La. Ann. 1009, 24 S. 674.

## CHAPTER XI.

### UNIFORMITY AND EQUALITY.

- § 54. Requirement of Uniformity not Applicable to Inheritance Taxes.
- § 55. Meaning of "Equality" Molded to New Conditions.
- § 56. Authority to Levy Inheritance Taxes Makes Uniformity Unnecessary.
- § 57. Uniformity within Specified Classes.
- § 58. Proportional Tax Required.
- § 59. Geographical Uniformity.

#### Sec. 54. Requirement of Uniformity not Applicable to Inheritance Taxes.

It is often said that constitutional requirements of uniformity and equality apply only to property taxes and not to an inheritance tax,<sup>1</sup> and do not prohibit an inheritance tax which by its nature cannot be uniform in the same sense as a property tax,<sup>2</sup> but there is some authority to the contrary in Minnesota.<sup>3</sup>

<sup>1</sup>*Booth v. Commonwealth*, 130 Ky. 88, 113 S. W. 61. *Tyson v. State*, 1868, 28 Md. 577. *Nunnemacher v. State*, 129 Wis. 190, 204-220, 108 N. W. 627, 9 L. R. A. N. S. 121. *Beals v. State*, 139 Wis. 544, 552, 121 N. W. 347.

In an earlier decision the court does not decide whether an inheritance tax is subject to the constitutional provision that the rule of taxation shall be uniform. "Considering the clause without undue refinement of reasoning, it is difficult to see why it does not apply to an inheritance or succession tax. It is true such a tax is called an excise in the decisions. An excise is a duty levied on articles of sale or manufacture, upon licenses to pursue certain trades or deal in certain commodities, upon official privileges, etc. Cooley, *Taxation* (2d ed.), 4. But when such duty is levied upon a trade, occupation or privilege as a means of producing revenue alone, and not in exercise of the police power, it is, to all intents and purposes, an exercise of the taxing power, and no good reason is perceived why such taxation is not included within the taxation referred to in the constitution in the clause quoted. The argument against this position is that the words immediately following this clause, namely, 'and taxes shall be levied upon such *property* as the legislature shall prescribe,' indicate that it is a taxation of property alone which the section covers." *Per Winslow, J.*, in *Black v. State*, 113 Wis. 205, 218, 89 N. W. 522, 90 Am. St. Rep. 853.

Inheritance taxes were upheld as not violating the requirement of uniformity in *Dixon v. Ricketts*, 26 Utah 215, 72 P. 947. *State v. Alston*, 94 Tenn. 674, 30 S. W. 750.

<sup>1</sup>*Thompson v. Kidder*, 74 N. H. 89, 96, 65 A. 392.

<sup>2</sup>*State v. Gorman*, 40 Minn. 232, 41 N. W. 948.

The amendment of 1894 to the Minnesota constitution, a. 9, s. 1, was incorporated into the existing constitution and the section in question must be construed precisely as if the proviso had been a part of the original section; hence the mandate of equality qualifies the provisions of the amendment and applies to the whole section. The court therefore holds that the requirements of equality in taxation applies to inheritance taxes exactly as it does to taxes on property except as expressly provided in the last clause of the section. *Drew v. Tift*, 79 Minn. 175, 81 N. W. 839, 47 L. R. A. 525, 79 Am. St. Rep. 446.

See, however, *State v. Basille*, 97 Minn. 11, 106 N. W. 93, 6 L. R. A. (N. S.) 732.

### **Sec. 55. Meaning of "Equality" Molded to New Conditions.**

The requirement of equality has been molded from time to time in view of the prevalent economic theories and changing conditions of government.

*State v. Basille*, 97 Minn. 11, 106 N. W. 93, 6 L. R. A. (N. S.) 732.

### **Sec. 56. Authority to Levy Inheritance Tax Makes Uniformity Unnecessary.**

Direct constitutional authority to levy an inheritance tax includes authority to levy one which is not uniform.

The intention and effect of the amendment of 1903 to the constitution of New Hampshire was to provide in addition to taxation as theretofore defined a different method of meeting public charges by an inheritance tax. As an inheritance tax is necessarily disproportional and is unequal in its lack of proportion, and it is impossible to lay a proportional tax upon property upon the occasion of death, it cannot have been understood that such impossibility would defeat the express power to lay such a tax, but it must follow that the express authority to impose such a tax is an authority to disregard the general rule of proportion so far as is necessary to exercise the power. For instance, poll taxes are recognized by the constitution, but they are not proportional, they are constitutional acts recognized by the constitution and have never been understood to have been rendered unconstitutional by lack of proportion or inability to pay. *Thompson v. Kidder*, 74 N. H. 89, 96, 65 A. 392.

### **Sec. 57. Uniformity within Specified Classes.**

Uniformity means only uniformity within the class and does not prohibit proper classification with different rates for each.<sup>1</sup> "If a burden in the nature of taxation is laid upon the right [of descent], the constitutional principle that taxes must be uniform

as to the classes upon which they operate must be observed. Subject to this restriction the legislature may lay taxes upon the right of one class of persons and corporations to succeed to property of deceased persons, and exempt the right of other classes of persons or corporations from such taxation."<sup>2</sup>

<sup>1</sup> *Nunnemacher v. State*, 129 Wis. 190, 221, 108 N. W. 627, 9 L. R. A. N. S. 121.

The constitutionality of inheritance taxes are based on two principles: "1. An inheritance tax is not one on property, but one on the succession. 2. The right to take property by devise or descent is the creature of the law, and not a natural right — a privilege, and therefore the authority which confers it may impose conditions upon it. From these principles it is deduced that the states may tax the privilege, discriminate between relatives, and between these and strangers, and grant exemptions, and are not precluded from this power by the provisions of the respective state constitutions requiring uniformity and equality of taxation." *Magoun v. Illinois Trust & Savings Bank*, 170 U. S. 283, 287, 18 Sup. Ct. 594, 42 L. Ed. 1037. "Equality" as applied to the progressive tax, see *post*, s. 64.

<sup>2</sup> *Per* Boggs, J., *In re Speed*, 216 Ill. 23, 27, 74 N. E. 809, 108 Am. St. Rep. 189, affirmed 203 U. S. 553, 27 S. Ct. 171, 51 L. Ed. 314

## Sec. 58. Proportional Tax Required.

The requirement of proportional taxation is not intended to apply to inheritance taxes.

*Tyson v. State*, 28 Md. 577. *Eyre v. Jacob*, 14 Gratt. (Va.) 422, 433, 73 Am. Dec. 357.

A requirement in the Maryland constitution that every person shall contribute proportionally for the support of the government did not forbid an inheritance tax. While this article provided for a *uniform* mode of taxation on property it was not the purpose of the friends of the constitution to prohibit any other species of taxation but to leave the legislature power to impose such other taxes as the necessities of the government might require. *Tyson v. State*, 28 Md. 577.

The Vermont constitution provides that every member of society is bound to contribute "his proportion" towards the expense of the protection which the state affords him, and it is claimed that this excludes all methods of taxation that are not uniform, equal and proportionate. And it was claimed that the collateral inheritance tax lacked uniformity. The court holds, however, that the question is what constitutes equality of apportionment within the meaning of this provision, and in doing this the basis of the act in question must be considered, that the statute is not a tax upon property but a tax upon the transmission of property, which is not a natural right, but a privilege accorded by the state. And the court decides that the constitutional requirement of proportional contributions was not intended to restrict the state to methods of taxation that operate equally upon all its inhabitants, regardless of the variety and measure of the advantages derived from its protection and regulation. A member of the body politic has from the state not only the protection of his property, but the privilege of taking property by descent and by will. It seems

clear that privileges of this character as well as property are to be considered in determining the just proportion of the individual. *In re Hickok*, 78 Vt. 259, 62 A. 724.

The opposite view was expressed in a discredited New Hampshire case: "Immunity from disproportional taxation being expressly reserved in our bill of rights, and the power of proportional taxation only being granted the legislature by the constitution, we are unaware of any ground upon which the statute under consideration [Gen. Laws, c. 64] can be upheld; for if it is to be regarded as a tax on property, it is open to the objection of unequal and double taxation, and if it is to be regarded as a tax on a civil right or privilege, it is discriminating and disproportional. See *State v. United States & Can. Express Co.*, 60 N. H. 219." *Per* Blodgett, J., in *Curry v. Spencer*, 61 N. H. 624, 631, 60 Am. St. Rep. 337. *Curry v. Spencer*, 61 N. H. 624, is explained in *Minot v. Winthrop*, 162 Mass. 113, 118, as going on the ground that the tax in that case is not proportional and so cannot be supported as a tax on property under the constitution of that state which authorizes only taxes and assessments on polls and property."

In Missouri the act of 1895 was found void as a property tax not levied in proportion to the value of the property as the constitution required. *State v. Switzler*, 143 Mo. 287, 330, 45 S. W. 245, 40 L. R. A. 280, 65 Am. St. Rep. 653.

## Sec. 59. Geographical Uniformity.

Constitutional requirements of uniformity mean merely that general tax laws shall be in full force throughout the taxing district.

*State v. Ferris*, 53 Ohio St. 314, 41 N. E. 579, 30 L. R. A. 218. *Knowlton v. Moore*, 178 U. S. 41, 108, 20 S. Ct. 747, 44 L. Ed. 969. (U. S. Const., art. 1, s. 8.)

"An excise tax which operates uniformly throughout the state and bears equally upon all persons standing in the same category does not deprive any of equal protection of the laws." *Per* Spear, C. J., in *State v. Guilbert*, 70 Ohio St. 229, 255, 71 N. E. 636.

The Wisconsin tax was declared unconstitutional primarily because it applied only to one county, in *State v. Mann*, 76 Wis. 409, 45 N. W. 526.

"I do not perceive wherein the inequality and want of uniformity complained of can be said to consist. . . . The tax is equal and uniform throughout the state as far as it is susceptible of the application of the rule. It is the same everywhere upon the succession to estates of equal value of whatever subjects they may consist." *Per* Lee, J., in *Eyre v. Jacob*, 1858, 14 Gratt. 422.

## CHAPTER XII.

### CLASSIFICATION BY RESIDENCE.

#### § 60. Corporations.

#### § 61. Individuals.— Aliens.— Effect of Treaties.

#### Sec. 60. Corporations.

Exempting domestic and not foreign corporations from tax is a valid classification.

An exemption of foreign charitable corporations is not obnoxious to the provisions of the fourteenth amendment to the federal constitution, s. 1, "that no state shall deny to any person within its jurisdiction the equal protection of the laws," as it is settled that a corporation is not a citizen within the meaning of this clause of the federal constitution. Furthermore, the legislature has the right in laying taxes to classify corporations as has been done in this state in recent years, and can classify resident corporations in one class and foreign corporations in another. *Humphreys v. State*, 70 Ohio St. 67, 87, 101 Am. St. 888, 70 N. E. 907, 65 L. R. A. 776, affirming 13 Low. D. 168, 1 C. C. N. S. 1, 14 Cir. D. 238.

The Illinois inheritance statute of 1895 as amended in 1901 exempted from the inheritance tax certain charitable corporations organized under the law of Illinois and did not exempt similar corporations organized under the laws of other states. The court holds that this distinction is not contrary to the fourteenth amendment to the federal constitution; that if a state exempt property bequeathed for charitable and educational purposes from taxation it is not unreasonable or arbitrary to require the charity to be exercised or education to be bestowed within her borders and for her people whether exercised through persons or corporations. *Board of Education v. Illinois*, 203 U. S. 553, 563, 27 S. Ct. 171, 51 L. Ed. 314.

To the effect that exemptions apply only to domestic charitable corporations, see *post*, s. 257.

#### Sec. 61. Individuals.— Aliens.— Effect of Treaties.

State statutes discriminating against alien beneficiaries have been often held void as in conflict with particular United States treaties,<sup>1</sup> and they are also ineffective so far as they attempt to extend to residents of the state privileges not accorded to residents of other states,<sup>2</sup> but otherwise they are valid.<sup>3</sup> A lucid explanation of the doctrine was given by our supreme court in an early case upholding the validity of the Louisiana statute, which levied a tax

on legacies when the legatee was neither a citizen of the United States, nor domiciled in the state, the court saying:—

“Now the law in question is nothing more than an exercise of the power which every state and sovereignty possesses, of regulating the manner and term upon which property real or personal within its dominion may be transmitted by last will and testament, or by inheritance; and of prescribing who shall and who shall not be capable of taking it. Every state or nation may unquestionably refuse to allow an alien to take either real or personal property, situated within its limits, either as heir or legatee, and may, if it thinks proper, direct that property so descending or bequeathed shall belong to the state. In many of the states of this union at this day, real property devised to an alien is liable to escheat. And if a state may deny the privilege altogether, it follows that, when it grants it, it may annex to the grant any conditions which it supposes to be required by its interests or policy. This has been done by Louisiana. The right to take is given to the alien, subject to a deduction of ten per cent for the use of the state.

“In some of the states laws have been passed at different times imposing a tax, similar to the one now in question, upon its own citizens as well as foreigners; and the constitutionality of these laws has never been questioned. And if a state may impose it upon its own citizens, it will hardly be contended that aliens are entitled to exemption; and that their property in our own country is not liable to the same burdens that may lawfully be imposed upon that of our own citizens.

“We can see no objection to such a tax, whether imposed on citizens and aliens alike, or upon the latter exclusively. It certainly has no concern with commerce, or with imports or exports. It has been suggested, indeed, in the argument, that as the legatee resided abroad, it would be necessary to transmit to her the proceeds of the portion of the estate to which she was entitled, and that the law was therefore a tax on exports. But if that argument was sound, no property would be liable to be taxed in a state, when the owner intended to convert it into money and send it abroad.”<sup>4</sup>

The tax on an estate of one who died before a treaty became effective cannot be affected by it.<sup>5</sup>

<sup>1</sup>*Adams v. Akerlund*, 168 Ill. 632, 48 N. E. 454. (Swedish treaty of 1783.) *Succession of Dufour*, 10 La. Ann. 391. (French treaty of 1853.) *Succession of Crusius*, 19 La. Ann. 369. (Bavarian treaty of 1845.) *Succession of Rizner*, 48 La. Ann. 552, 19 S. 597, 32 L. R. A. 177. (Italian treaty of 1871.) *Succes-*

sion of *Rabasse*, 49 La. Ann. 1405, 22 So. 767, 772. (French treaty of 1853.) *State v. Circe*, Man. Unreported Cases (La.) 412. (French treaty of 1853.) *In re Stixrud*, 58 Wash. 339, 109 P. 343, 348. (Treaty of 1827 with Norway and Sweden.) See *post*, s. 305.

**"Goods and effects" include real estate.** The treaty between Norway and Sweden and the United States of 1827, uses the words "goods and effects" to designate the property the treaty is applicable to, but the court holds that these words include real estate, following *Adams v. Akerlund*, 168 Ill. 632, 48 N. E. 454, and *University v. Miller*, 14 N. C. 207. *In re Stixrud*, 58 Wash. 339, 109 P. 343, 349.

**Heirs.** The treaty of 1827, between the United States and Norway and Sweden, provided for the succession by "heirs," and the court notes that this word has a technical common law meaning restricting it to those who take by inheritance only; while by the civil law it applies to all persons who are called to the succession whether by act of the party or by operation of law. As the word is used in this treaty by countries in one of which the common law prevails and the other of which the civil law prevails, there does not appear to be any reason for here attributing to it the technical meaning of either of these systems of law in preference to the other, and hence the word "heirs" includes those who receive by will as well as those who receive by operation of law. *In re Stixrud*, 58 Wash. 339, 109 P. 343, 349.

**The New York statute of 1887 is not a "detraction tax,"** but a succession tax, and is therefore not included within the terms of the treaty of 1844 between the Kingdom of Wurtemberg and the United States. *In re Stroebel*, 5 N. Y. App. Div. 621, 39 N. Y. Suppl. 169.

<sup>2</sup>*In re Stanford's Estate* (Cal. 1898), 54 Pac. 259, reversed on another point in 126 Cal. 112, 58 P. 462, 45 L. R. A. 788. *State v. Hamlin*, 86 Me. 495, 507, 30 A. 76, 41 Am. St. Rep. 569, 25 L. R. A. 632 *semble*.

The California statute as amended by the statute of 1897 exempting nephews and nieces when resident of the state is not void under the United States constitution. On the contrary the effect of the United States constitution, section 2, article 4, is to extend the exemption there given to citizens of other states, as the effect of the federal constitution is to measure the exemption by the exemption given to citizens of California. *In re Johnson*, 139 Cal. 532, 537. The court notes the case of *In re Mahoney*, 133 Cal. 180, 65 P. 389, 85 Am. St. Rep. 155, and says that the question was raised there by aliens and that therefore no constitutional question was involved and the decision in the Mahoney case was a dictum which the court refuses to follow.

<sup>3</sup>*State v. Poydras*, 9 La. Ann. 165, 167. *Succession of Schaffer*, 13 La. Ann. 113. *State v. Martin*, 2 La. Ann. 667. *Succession of George*, 4 La. Ann. 223. *Succession of Pehan*, 5 La. Ann. 304. See *In re Strixrud*, 58 Wash. 339, 109 P. 343, where the question is not decided. See Iowa St. 1911, *post*, p. 458 *et seq.*

**The Louisiana statute** provided that every person not domiciled in the state and not being a citizen of the United States shall pay an inheritance tax of ten per cent. A treaty between the United States and the King of Wurtemberg, dated April 10, 1844, provided that citizens of each country should have a right to take as heirs, paying such duties only as the inhabitants of the country where the property lies. The court holds that this statute does not make any discrimination between citizens of the state and aliens in the same circumstances



as a citizen of Louisiana domiciled abroad is subject to the tax. Furthermore, the case of a citizen or subject of the respective countries residing at home and disposing of property there in favor of a citizen or subject of the other was not in contemplation of the treaty. So the tax should be collected on the estate of a citizen of Louisiana leaving property to a citizen of Wurtemberg. *Frederickson v. State*, 23 How. (U. S.) 445.

It was contended that the act of 1842 must be construed according to its own terms and that the discrepancy between its language excepting those who are not citizens of any state in the union and the La. St. 1850 which excepts only those who are not citizens of any *other* state or territory means that heirs who are citizens of the United States and heirs who are domiciled in Louisiana are exempt from taxes. The court, however, by reference to the French version of the statute and the original exemplification finds that the word "other" has been inadvertently omitted in the English text and from this view of the statute the court concludes that the tax attaches not only to property falling to alien heirs who are non-residents, but also to property falling to citizens of Louisiana residing abroad. The only exceptions to non-resident heirs are citizens of any other state or territory of the United States than the state of Louisiana. This exemption was probably intended to satisfy the second section of the fourth article of the constitution of the United States. The object of the law was not only to increase the revenues of the state, but to discourage absenteeism. *State v. Poydras*, 9 La. Ann. 165.

"**Personal Goods.**" "**Inhabitants.**" The treaty of 1795 between the United States and Spain provides that the citizens and subjects of each party shall have power to dispose of their "personal goods" within the jurisdiction of the other, and their representatives being subjects of the other party shall succeed to their said personal goods and dispose of the same at their will, paying such dues only as the inhabitants of the country wherein the goods are shall be subject to pay in like cases. The court finds that the words "personal goods" include movable property only and not real estate or immovable property. The word "inhabitants" was intended to have as broad a signification as would be needed to insure to the citizens of each country full protection which it was intended to secure. The general assembly did not have in view the imposition of a succession tax upon the citizens of Louisiana living away from the state. The treaty would have no effect if the act was extended to Spanish heirs or legatees living in their own country. La. St. 1894 was not, however, aimed at any portion of the people of Louisiana and therefore Spanish heirs and legatees have the same rights that they do to exemption. *Succession of Sala*, 50 La. Ann. 1009, 24 S. 674.

<sup>4</sup>*Per Taney, C. J., in Mager v. Grima*, 8 How. 490. To the same effect see *Arnaud v. Arnaud*, 3 La. 336.

<sup>5</sup>*Succession of Prevost*, 12 La. Ann. 577. This judgment was affirmed in *Prevost v. Greneaux*, 19 How. 1.

## CHAPTER XIII.

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### CLASSIFICATION BY RELATIONSHIP.

§ 62. In General.

§ 63. Transfers where Life Estate is Reserved to Grantor.

#### Sec. 62. In General.

It is well settled that classification for purposes of the inheritance tax by degrees of relationship to the testator is valid and does not violate constitutional requirements of equality or uniformity.<sup>1</sup> So confining the tax to collaterals and strangers,<sup>2</sup> discrimination among collaterals,<sup>3</sup> or taxing lineals at a higher rate than collaterals, is generally upheld.<sup>4</sup>

The classification need not follow the lines of inheritance. There is no necessary connection between inheritance and taxation, and in making laws relating to these two subjects the legislature is not required to consider them together. In determining the mode in which the estate of an intestate shall be distributed, the legislature did not in any respect impair its right to distribute the burden of taxation or to determine the classes by which that burden shall be borne.<sup>5</sup>

*Distinction among Life Tenancies based on Relationship of Remaindermen.* The Illinois statute of 1895 provided that a life estate should be taxable when the remainder was to lineal descendants and not taxable where the remainder was to collateral descendants or strangers. It was claimed that this was void as unreasonable classification; that life tenants constitute but a single class, as the incidents of such an estate are the same irrespective of the ultimate vesting of the remainder. The court holds, however, that this was entirely within the discretion of the state legislature; that the power of the state to impose conditions upon the transfer or devolution of estates is complete where no discrimination is exercised in the creation of a class. "Crossing the lines of the classes created by the statute discriminations may be exhibited, but within the classes there is equality." This is not an arbitrary or warranted discrimination between life tenants. A life estate with the fee descending in lineal life might well be more desirable than a life

estate with remainder to collateral heirs or strangers to the blood. The exemption may be regarded as a concession to beneficiaries of the first class while the last of their line to hold and enjoy the property.<sup>6</sup>

<sup>1</sup> *Kochersperger v. Drake*, 167 Ill. 122, 47 N. E. 321, 41 L. R. A. 446. *Booth v. Commonwealth*, 130 Ky. 88, 113 S. W. 61. *In re Fox*, 154 Mich. 5, 13. *State v. Switzer*, 143 Mo. 287, 333, 45 S. W. 245, 40 L. R. A. 280, 65 Am. St. Rep. 653. *In re Patterson*, 130 N. Y. Suppl. 970, 127 N. Y. Suppl. 284. *In re Opinion of Justices*, (N. H. 1911), 79 A. 490. *Nunnemacher v. State*, 129 Wis. 190, 221, 108 N. W. 627, 9 L. R. A. (N. S.) 121. *State v. Clark*, 30 Wash. 439, 71 P. 20; *Magoun v. Illinois Trust & Savings Bank*, 170 U. S. 283, 287, 42 L. Ed. 1037, 18 U. S. Sup. Ct. 594.

A distinction between direct descendants and collateral kindred and strangers has abundant reason upon which to sustain it, for the moral claim of collaterals and strangers is less than of kindred in direct line and the privilege is therefore greater. Tenn. St. 1893, c. 89, s. 7, is not unconstitutional because it discriminates between direct descendants and collateral kindred and strangers. *State v. Alston*, 94 Tenn. 674, 30 S. W. 750, 28 L. R. A. 178. As to persons liable to tax see further, *post*, s. 303 *et seq.*

<sup>2</sup> *State v. Hamlin*, 86 Me. 495, 502, 30 A. 76, 41 Am. St. Rep. 569, 25 L. R. A. 632. *Minot v. Winthrop*, 162 Mass. 113, 123, 26 L. R. A. 259. *State v. Henderson*, 160 Mo. 190, 216, 60 S. W. 1093. *Hagerty v. State*, 55 Ohio St. 613, 45 N. E. 1046, affirming 5 Ohio Cir. Dec. 701, 12 Ohio Cir. Ct. 606, relying upon *State v. Ferris*, 53 Ohio St. 314. *Eyre v. Jacob*, 14 Gratt. (Va.) 422, 431, 73 Am. Dec. 367.

**New Hampshire.** The New Hampshire constitution requires that an inheritance tax must be proportional and constitute only the just share of those upon whom it is imposed. It cannot lawfully make discriminations and cast a burden upon one class of beneficiaries and exempt all other classes from its operation; and it cannot, therefore, for purposes of taxation, exempt legacies and successions to lineal descendants and include only those to collaterals and others than those specified. "Such a tax is founded upon pure inequality, and is simply extortion in the name of taxation; and it can therefore never be sustained in this jurisdiction so long as equality and justice continue to be the basis of constitutional taxation." *Per Blodgett, J., in Curry v. Spencer*, 61 N. H. 624, 632, 60 Am. St. Rep. 337.

This decision is now generally discredited and is no longer law, even in New Hampshire, where a constitutional amendment subsequently gave the legislature authority to levy an inheritance tax. Under this amendment the act of 1905 was held constitutional. The court distinguishes *Curry v. Spencer*, 61 N. H. 624, as the right then in question was the right to the privileges of the probate court for the purposes of administration; and if one estate was entitled to be there settled without payment of fee, all were. The right under the act of 1905, however, is a right to the passing of property, and the court says that there are good reasons why the passing of property to near relatives or the gift of it to charitable purposes or directly to the public should not be subject to an exaction by the state. Reasonable exemptions of property have not been considered to effect the validity of the tax upon other property, and the exemp-

tions in this statute do not render the assessment unreasonable. *Thompson v. Kidder*, 74 N. H. 89, 97, 65 A. 392.

<sup>1</sup>*In re Wilmerding's Estate*, 117 Cal. 281, 49 P. 181. (Upholding distinction between the surviving brothers and sisters of the testator and the children of deceased brothers and sisters.) "The discrimination is based upon, and justified by, the fact that there are degrees in collateral kinship."

*Hagerty v. State*, 55 Ohio St. 613, 45 N. E. 1046, affirming 12 C. C. R. 606, 5 Ohio Cir. Dec. 701.

The fourteenth amendment to the federal constitution does not render invalid the California statute of 1893 as amended in 1899, because it subjected to an inheritance tax brothers and sisters of a decedent and did not subject to such burden such strangers to the blood as the wife or widow of a son or the husband of a daughter. The court says that the discretion of the state in this matter can only be affected by the fourteenth amendment when the discretion is so obviously arbitrary and unreasonable as to be beyond the pale of governmental authority.

The court holds it is not arbitrary to put in one class for the purpose of inheritance all blood relatives to a designated degree except brothers and sisters and to place all other and more remote relatives including brothers and sisters in a second class along with strangers to the blood. *Campbell v. California*, 200 U. S. 87, 95, 26 S. Ct. 182, 50 L. Ed. 382.

Exempting stepchildren from the collateral inheritance tax together with other lineal descendants is not void as improper classification. The court remarks that it has nothing to do with the wisdom of legislation. *Commonwealth v. Randall*, 225 Pa. St. 197, 73 A. 1109.

"There is a natural reason for taxing the privilege of the latter [collaterals] of receiving the property at a higher rate than that of the former [lineals], and the amendment of 1894 to the Minnesota constitution authorizes such graduation of the tax. *Drew v. Tift*, 79 Minn. 175, 81 N. W. 839, 47 L. R. A. 525, 79 Am. St. Rep. 446.

<sup>2</sup>*In re Wilmerding's Estate*, 117 Cal. 281, 49 P. 181.

<sup>3</sup>*Billings v. People*, 188 U. S. 97, 104, 23 S. Ct. 272, 47 L. Ed. 400, affirming 189 Ill. 472, 482, 59 L. R. A. 807.

A tax on lineals imposed only on the value of property transferred in excess of five thousand dollars where all transfers of five thousand dollars and less to lineals are exempt from the act, while the tax on collaterals is upon the entire transfer of property if its value exceeds five thousand dollars, is a clear inequality and discrimination between collateral and lineal descendants which renders the statute unconstitutional. *State v. Basille*, 87 Minn. 500, 92 N. W. 415, 94 Am. St. Rep. 718.

If the Michigan act is a property tax it is void as violating the provisions of the constitution requiring uniformity, as it provides for a different rate for direct descendants from that on collaterals. *Chambe v. Durfee*, 100 Mich. 112, 58 N. W. 661.

## Sec. 63. Transfers where Life Estate is Reserved to Grantor.

It is a good classification to single out for taxation transfers where the life estate is reserved to the grantor, leaving all other transfers exempt.

"We think that there are sufficient reasons to support the classification made by the statute; at least that the classification cannot be said to be devoid of reasonable ground on which to rest. Inheritance tax laws have been very generally adopted throughout the states of the union. A substantial part of the revenue necessary to support their governments is now derived from that source. A not wholly unnatural desire exists among owners of property to avoid the imposition of inheritance taxes upon the estates they may leave, so that such estates may pass to the objects of their bounty unimpaired. It is a matter of common knowledge that for this purpose trusts or other conveyances are made whereby the grantor reserves to himself the beneficial enjoyment of his estate during life. Were it not for the provision of the statute which is challenged, it is clear that in many cases the estate on the death of the grantor would pass free from tax to the same persons who would take it had the grantor made a will or died intestate. It is true that an ingenious mind may devise other means of avoiding an inheritance tax— but the one commonly used is a transfer with reservation of a life estate. We think this fact justified the legislature in singling out this class of transfers as subject to a special tax."

*Per Cullen, C. J., in In re Keeney, 194 N. Y. 281, 286, 87 N. E. 428, affirming 128 N. Y. App. Div. 893. Taxation based on relationship of remaindermen, see ante, s. 62.*

## CHAPTER XIV.

### CLASSIFICATION BY AMOUNT—PROGRESSIVE RATES.

- § 64. Validity in General.
- § 65. From the Aspect of Political Economy.
- § 66. Increased Rate Applied to Excess Only.
- § 67. Tax Proportioned to Amount Received.
- § 68. Classification by Amount of Whole Estate.
- § 69. The Pennsylvania Doctrine.
- § 70. Confiscatory Rates.

#### Sec. 64. Validity in General.

A graduated progressive tax is valid,<sup>1</sup> and constitutes equal protection of the laws,<sup>2</sup> and is not invalid even under a constitution providing that taxes shall be in proportion to the value of the property.<sup>3</sup> Our own supreme court has said of it: "The review which we have made exhibits the fact that taxes imposed with reference to the ability of the person upon whom the burden is placed to bear the same have been levied from the foundation of the government. So, also, some authoritative thinkers, and a number of economic writers, contend that a progressive tax is more just and equal than a proportional one. In the absence of constitutional limitation, the question whether it is or is not is legislative and not judicial. The grave consequences which, it is asserted, must arise in the future if the right to levy a progressive tax be recognized, involves in its ultimate aspect the mere assertion that free and representative government is a failure, and that the grossest abuses of power are foreshadowed unless the courts usurp a purely legislative function."<sup>4</sup>

<sup>1</sup> *Union Trust Co. v. Duffee*, 125 Mich. 487, 84 N. W. 1101, 7 Detroit Leg. N. 597, following with some reluctance *Magoun v. Savings Bank*, 170 U. S. 301, 18 Sup. Ct. 601.

*In re McKennan*, (S. D. 1911), 130 N. W. 33, reversing judgment on rehearing, 25 S. D. 369, 126 N. W. 611. *Nunnemacher v. State*, 129 Wis. 190, 222, 108 N. W. 627, 9 L. R. A. N. S. 121. *Knowlton v. Moore*, 178 U. S. 41, 20 Sup. Ct. 747, 44 L. Ed. 969.

**In New Hampshire.** On the question whether in view of the constitution as it was construed and understood prior to 1903, it was intended by the amend-

ment then made to authorize a progressive tax, the court is divided in opinion and therefore declines to express any opinion whatever. *In re Opinion of Justices* (N. H. 1911), 79 A. 490.

**There is no difference in principle between an exemption given to direct inheritances and a progressive tax.** The same inequality exists in the one case as in the other; and if there is unjust discrimination in the one case there is also in the other. The difference is one of degree and not of principle. *In re Fox*, 154 Mich. 5, 11.

**Authority to classify persons and property for the purpose of taxation is well settled and graded or progressive taxation is intimately associated with that of classification and perhaps amounts substantially to the same thing.** *State v. Basille*, 97 Minn. 11, 106 N. W. 93, 6 L. R. A. N. S. 732. *State v. Vance*, 97 Minn. 532, 106 N. W. 98.

**The following cases** have been cited to show that an unequal graduated rate is unconstitutional: *Black v. State*, 113 Wis. 205; *State v. Ferris*, 53 Ohio St. 314; *Drew v. Tift*, 79 Minn. 187; *State v. Basille*, 87 Minn. 503.

In a recent case, *State v. Basille*, 97 Minn. 11, the court has explained and somewhat modified its former holdings. The same may be said of the Wisconsin and Ohio courts in their recent utterances. *Nunnemacher v. State*, 129 Wis. 190. *State v. Guilbert*, 70 Ohio St. 229. See *In re Fox*, 154 Mich. 5, 12.

**The Mo. St. 1895 is void** as contravening Mo. Const. a. 10, s. 3, as it is not "uniform upon the same class of subjects within the territorial limits of the authority levying the tax" within the Mo. Const. a. 10, s. 3. It is clear that where the amount of property received is made the basis of the tax, uniformity is only attainable by levying the same per cent upon all property belonging to persons bearing the same relation to the decedent. *State v. Switzer*, 143 Mo. 287, 332, 45 S. W. 245, 40 L. R. A. 280, 65 Am. St. Rep. 653, relying on *State v. Ferris*, 53 Ohio St. 314, 30 L. R. A. 218.

<sup>2</sup> *Nunnemacher v. State*, 129 Wis. 190, 108 N. W. 627, 9 L. R. A. (N. S.) 121. *Magoun v. Illinois Trust & Savings Bank*, 170 U. S. 283, 18 Sup. Ct. 594.

**History and Principles.** "It is insisted that the proviso authorizing the inheritance tax must be construed in connection with the equality mandate, and that, properly construed, the tax, although it may be graded or progressive, must, as respects graded or progressive features, be made as nearly equal as may be, and that the statute does not conform to this requirement. Counsel contend that this construction is sustained by the *Drew* case. In this we do not concur.

"The history of taxation, in harmony with all human affairs, is one of evolution. Its progress from the earliest times to the present day is one of constant development, in keeping with the advancing intelligence of man, unrolling step by step, with changing economic and social conditions, tardily, however, new methods and means of subjecting untaxed property to the tax rolls. Originally public revenue was raised by voluntary contributions from the citizens; later, in response to appeals and solicitations of the rulers; and finally, when voluntary contributions ceased, as at the present day, by compulsory assessments, enforced by the operation of law. With this latter method came the demand, born of injustice and oppression, for uniformity and equality, and provisions securing it have long been a part of the fundamental law of all democratic forms of government. Formerly tangible property only was taxed. Ability or faculty

to pay has come to be the test in determining the justness of taxation. It is 'not only the basis of taxation, but the goal toward which society is steadily working. It lies instinctively and unconsciously at the bottom of all of our endeavors at reform.' [Seligman, Tax. 72.]

"The equity and fairness of this theory, in its broadest sense, when we reflect upon the vast fortunes accumulated as the result of especially advantageous opportunities and facilities, not possessed by people in general, is apparent and obvious. It works no injustice or harm to those thus fortunately situated, does not injuriously affect productive or industrial agencies, and relieves in a measure those with lesser opportunities, and those to whom taxation is always an extreme burden. This theory does not, however, harmonize well with a strict application of the fundamental mandate of equality, as applied more particularly to the proportional system of taxation in force in this and other states. We mean by 'proportional system' a tax at a fixed and uniform rate, in proportion to the amount of taxable property, based upon a cash valuation, and legislatures and courts have been not a little embarrassed in attempts to apply it.

"But an examination of the books discloses that the equality mandate has been expanded and made to yield, from time to time, to new and advancing social and economic conditions. The general principle is retained, but is applied with less rigor and strictness. In our own state it has been enlarged, extended, and departed from by the people. As it originally stood, our constitution in this respect prevented the assessment of property for local improvements, and it was amended by expressly excepting such assessments from the equality rule. *Bidwell v. Coleman*, 11 Minn. 45 (78); *Sperry v. Flygare*, 80 Minn. 325, 83 N. W. 177, 49 L. R. A. 757, 81 Am. St. Rep. 162. The equality mandate applies as a general rule to taxes upon property only, and is generally held by the courts of this country to have no application to inheritance taxation, because a tax of that nature is not one upon property but upon the right of succession or inheritance (27 Am. & Eng. Enc. (2d Ed.) 338), though in this state it was held to apply to inheritance taxes in *Drew v. Tift*, *supra*, and also to a similar statute in *State v. Gorman*, 40 Minn. 232, 234, 41 N. W. 948, 2 L. R. A. 701, precisely as in other taxation, except as otherwise provided by the amendment under consideration." *Per Brown, J.*, in *State v. Basille*, 97 Minn. 11, 16, 106 N. W. 93, 6 L. R. A. N. S. 732.

**The Contrary View.** While the legislature might perhaps distribute the collaterals according to the different degrees of kinship to the decedent, and levy a different rate upon the different degrees, yet when it ignores all such natural classification and makes the amount of money received by each the test of classification, it runs counter to another principle that is wellnigh universally accepted, that a uniform rate of taxation secures equality of burden. To levy a different rate simply because the amount of each man's holding is different would produce favoritism and destroy that principle of equality before the law which is the boast of free government. If it be urged that the one receiving the larger bounty enjoys the greater privilege, still the principle of uniformity answers that the value of his right to receive is in direct proportion to the value of the property to which he succeeds, and must, if taxation is to be uniform, be taxed in that proportion or according to one uniform rate. *State v. Switsler*, 143 Mo. 287, 333, 45 S. W. 245, 40 L. R. A. 280, 65 Am. St. Rep. 653.



<sup>2</sup>A tax which affects the property within a specific class is uniform as to that class and there is no provision of the constitution which precludes a tax on that particular class. No want of uniformity with one living who owns property can be urged as a reason why the statute makes an inconsistent rule. No person inherits or can take by devise except by statute and the state having power to regulate this question may create classes and provide for uniformity with reference to classes which were before unknown. *Kochersperger v. Drake*, 167 Ill. 122, 47 N. E. 321, 41 L. R. A. 446.

<sup>4</sup>*Per White, J., in Knowlton v. Moore*, 178 U. S. 41, 109, 20 S. Ct. 747, 44 L. Ed. 949.

### Sec. 65. From the Aspect of Political Economy.

The progressive tax, charging a higher percentage on large estates than on small ones, has the best of economic endorsement.

A learned discussion of progressive rates is contained in the monograph by Max West on the Inheritance Tax, at pages 221 *et seq.* Mr. West points out that the progressive tax was supported by John Stuart Mill. He remarks on the dangers to general business and society of inexperienced young men inheriting their fathers' fortunes; and states that there is no reason why the right of inheritance should be unlimited; that a progressive tax can be justified as a compensation for the inequality of taxes which fall more heavily on the poor than on the rich; that if the inheritance tax be regarded as a payment of back taxes the justice of progression is especially evident, because large fortunes undoubtedly escape taxation during the owner's life to a greater extent than small ones. Progressive taxes may also be explained on the simple principle that the tax paying ability increases more rapidly than wealth, or that the sacrifice involved in paying a proportional tax is less for the wealthy than for the poor. Mr. West points out that the most effective argument against the progressive tax is the political argument that it is a step towards socialism.

### Sec. 66. Increased Rate Applied to Excess Only.

A distinction has been attempted between cases where the increased rate is on the whole legacy and where it is applied only to the excess over the portion taxed at the primary rate,<sup>1</sup> but this view has not prevailed.<sup>2</sup>

<sup>1</sup>*State v. Ferris*, 53 O. St. 314. Cf. s. 291.

There are two methods of progression provided for in the statutes of the several states: one found in South Dakota wherein the higher rate in the case of transmission of a greater devise or bequest is levied upon the whole value of the property transmitted; the other, like that found in the Wisconsin statute, where the increased rate applies only to the excess in value of property transmitted over the amount subject to the next lower rate. The court remarks that if any difference is to be made in the rate of taxation between a large legacy and a small legacy on the theory that the increased ability to pay is greater in the case of the large beneficiary than of the smaller, that it cannot be said that the increased ability to pay of a devisee receiving \$20,000 over that of one

receiving \$10,000 comes from the receipt of his first \$10,000. The increased ability to pay does come solely from the receipt of the second \$10,000. "It is ridiculous to say that a man who receives a devise or legacy of a thousand and one dollars is as well able to pay a tax of \$594.06 as is a man who receives ten thousand dollars to pay \$396. We have never discovered any method of making one dollar pay \$198.06."

If the progressive tax is based on the theory that it is against public policy to allow large estates to be held together by transmission after the death of the owners, which is the theory that seems the more reasonable to the court, the court replies that "if one person receives \$20,000 and another \$10,000 it was no greater privilege for the first to receive his first \$10,000 than for the second. The increased privilege is all found in receiving of the extra \$10,000, and it is the exercise of this extra privilege, the transmission of the extra \$10,000, that should receive the extra burden of taxation." *In re McKennan*, 25 S. D. 369, 126 N. W. 611, 618, reversed, however, on rehearing, 130 N. W. 33.

<sup>1</sup> *Magoun v. Illinois Trust & Savings Bank*, 170 U. S. 283, 18 Sup. Ct. 594, 42 L. Ed. 1037.

The progressive tax under South Dakota statute of 1905, where the increased rate applies to the whole legacy in a large estate, is valid. The court holds that this is logically, legally and constitutionally in the same category as classification, based on the net increased amount of a higher, over a lower, class. *In re McKennan*, (S. D. 1911,) 130 N. W. 33, reversing judgment on rehearing, 25 S. D. 369, 126 N. W. 611.

As to the progressive feature of the act, there are four classes created and there is equality between the members of each class. It was pointed out that the tax is not in proportion to the amount, but varies with the amount arbitrarily fixed, and hence that one who is given a legacy of \$10,001 by the deduction of the tax receives \$99.04 less than one who is given a legacy of \$10,000. But the court holds that this is not contrary to the rule of equality of the fourteenth amendment and that rule does not require, as we have seen, exact equality of taxation. It only requires that the law imposing it shall operate on all alike under the same circumstances. The tax is not on money; it is on the right to inherit, and hence a condition of inheritance; and it may be graded according to the value of that inheritance. The condition is not arbitrary because it is determined by that value; it is not unequal in operation because it does not levy the same percentage on every dollar; does not fail to treat all "alike under like circumstances and conditions, both in the privilege incurred and the liabilities imposed." *Per McKenna, J., in Magoun v. Illinois Trust & Savings Bank*, 170 U. S. 283, 298, 300, 18 Sup. Ct. 594, 42 L. Ed. 1037.

## Sec. 67. Tax Proportioned to Amount Received.

The fact that the tax is fixed at a certain percentage of the property passing to the beneficiary does not invalidate it<sup>1</sup> or deprive it of the requisites of equality and uniformity,<sup>2</sup> as the legislature has a right to classify the privilege taxed according to the value of the property received.<sup>3</sup>

<sup>1</sup> *Union Trust Co. v. Duffee*, 125 Mich. 487, 493, 84 N. W. 1101, 7 Detroit Leg. N. 597.

<sup>2</sup>*Booth v. Commonwealth*, 130 Ky. 88, 113 S. W. 61.

"Such right is derived from and regulated by municipal law; it arises from the relation of the individual to the state, and is not an inherent or constitutional right. It follows that in assessing a tax upon such right or privilege, the state may lawfully measure or fix the amount of the tax by referring to the value of the property passing, and is not precluded from this power by the provision of the constitution requiring uniformity and equality of taxation." *State v. Guilbert*, 70 Ohio St. 229, 255, 71 N. E. 636.

<sup>3</sup>*State v. Vinsonhale*, 74 Neb. 675, 105 N. W. 472, 474. *Eyre v. Jacob*, 14 Gratt. (Va.) 422, 73 Am. Dec. 367.

## Sec. 68. Classification by Amount of Whole Estate.

Classification by the amount of the estate of the decedent is probably valid,<sup>1</sup> although this has been held, with some reason, void as grossly unequal.<sup>2</sup>

<sup>1</sup>See *Minot v. Winthrop*, 162 Mass. 113, 124, 38 N. E. 512. Cf. also, as to exemptions, s. 243; rates, s. 289.

<sup>2</sup>*State v. Ferris*, 53 Ohio St. 314, 41 N. E. 579, 30 L. R. A. 218.

The court admits the validity of a progressive rate, but remarks as follows: "But while classification is proper, there must always be uniformity within the class. If persons under the same circumstances and conditions are treated differently, there is arbitrary discrimination, and not classification.

"It is claimed that such is the effect of the present law, and we can see no escape from the conclusion. People in the same class are subject to different rules, some being exempt and some being taxed. This results from the peculiar provisions of sec. 19 of the law, which defines 'estate' and 'property' as construed by the New York courts before we borrowed the law. As already pointed out, under this provision the \$10,000 limitation or exemption is based on the size of the whole property devised or granted, and not upon the amount received by each individual legatee or grantee. Thus it results that one collateral relative, receiving a legacy of \$2,000 from one testator, whose estate amounts to but \$9,500, pays no tax, while another collateral relative in the same degree, receiving a legacy of \$2,000 from another testator whose estate amounts to \$10,500, is obliged to pay a tax. Here is unlawful discrimination, pure and simple. No rational distinction or difference can be drawn between the two legatees simply because the estates from which their legacies come are of slightly different size. They are both within the same class, surrounded by the same conditions, and receiving the same benefits. One pays a tax, and the other does not. This is not the equal protection of the laws." *Per Winslow, J.*, in *Black v. State*, 113 Wis. 205, 218, 89 N. W. 522, 90 Am. St. Rep. 853.

## Sec. 69. The Pennsylvania Doctrine.

Under the Pennsylvania doctrine that the inheritance tax is a property tax, a progressive rate is void. The Pennsylvania Constitution, article 9, s. 1, declares: "All taxes shall be uniform upon the same class of subjects within the territorial limits of the authority

levying the tax." The language of section 1, as to what the rule of uniformity shall embrace, is as broad and comprehensive as it could possible have been made. The words "all taxes" must necessarily be construed to include property tax, inheritance tax, succession tax, and all other kinds of tax, the subjects of which are susceptible of just and proper classification. By necessary implication, the first clause of that section recognizes the authority of the legislature to justly and fairly, but never arbitrarily, classify those subjects of taxation with the view of effecting relative equality of burdens. A pretended classification that is based solely on a difference in quantity of precisely the same kind of property is necessarily unjust, arbitrary and illegal. For example, a division of personal property into three classes, with the view of imposing a different tax rate on each—class 1, consisting of personal property exceeding in value the sum of one hundred thousand dollars, class 2, consisting of personal property exceeding in value twenty thousand dollars and not exceeding one hundred thousand dollars, and class 3, consisting of personal property not exceeding in value twenty thousand dollars—would be so manifestly arbitrary and illegal that no one would attempt to justify it.

*In re Cope*, 191 Pa. St. 1, 21, 43 A. 79, 45 L. R. A. 316, 71 Am. St. Rep. 749.

### Sec. 70. Confiscatory Rates.

We conceive that a progressive tax which amounts to confiscation is void on fundamental principles, and that the Oklahoma statute, as applied to a large estate, for example, would receive scant consideration from the court. The possibility of such a result was considered by our supreme court in the following language: "If a case should ever arise where an arbitrary and confiscatory exaction is imposed bearing the guise of a progressive or any other form of tax, it will be time enough to consider whether the judicial power can afford a remedy by applying inherent and fundamental principles for the protection of the individual, even though there be no express authority in the constitution to do so. That the law which we have construed affords no ground for the contention that the tax imposed is arbitrary and confiscatory, is obvious."<sup>1</sup> The South Dakota court remarks: "It must be conceded that, if the legislature can fix rates of taxation, it can increase such rates, and upon grounds of public policy it might place a limit in the value above which all transmissions would go to the state."<sup>2</sup>

Our highest court has also said recently: "When logic and the policy of a state conflict with a fiction due to historical tradition, the fiction must give way."<sup>3</sup> )

It is true that the opposite doctrine has been frequently laid down under the guise of the theory that a right of succession on death is a creature of law and not a natural right. This has been expressed by our supreme court as follows:<sup>4</sup> "Though the general consent of the most enlightened nations has, from the earliest historical period, recognized a natural right in children to inherit the property of their parents, we know of no legal principle to prevent the legislature from taking away or limiting the right of testamentary disposition or imposing such conditions upon its exercise as it may deem conducive to public good."<sup>5</sup>

<sup>3</sup> *Per White, J., in Knowlton v. Moore*, 178 U. S. 41, 109, 20 S. Ct. 747, 44 L. Ed. 969.

<sup>4</sup> *Per Whiting, P. J., In re McKennan*, 25 S. D. 369, 126 N. W. 611, 618, reversed on rehearing, 130 N. W. 33.

#### INHERITANCE TAXES MAY EAT UP AN ENTIRE ESTATE AND POSSIBLY BANKRUPT THE EXECUTOR.

[From the New York Commercial, July 1, 1911.]

There has just been instituted here in New York by one Bunyan Lucas of Shawnee, Okla., a suit at law to break the will of John W. Hunt, a rich New Yorker, who died in Dallas, Texas, last December, leaving an estate said to be valued at \$1,000,000; he was a half-brother of Lucas and to the latter he bequeathed \$1,000 and a farm in Oklahoma; something over \$100,000 was devised to other relatives and friends; and the will directs that the residue of the estate shall be used to establish a charitable or benevolent institution in Georgia as a memorial to the testator; the will was executed in Asbury Park, N. J., and was recently admitted to probate in Florida; Lucas alleges that the probating of the will was unlawful and that a residuary bequest of this sort is invalid in New York state. The case bids fair to open up some highly interesting questions of law, inasmuch as six different states are directly or indirectly interested in it; and if the properties involved, whether personal or real estate, are scattered about in different states, the possibilities in the way of inheritance taxes almost run away with the imagination. Suppose, for instance, this residuary estate of \$1,000,000 consists of stocks and bonds of Oklahoma corporations and that the will stands. Oklahoma taxes such securities owned by non-residents when passing by inheritance, and the corporations themselves are responsible for the tax if they transfer title to them before the tax is paid; the first \$100 is exempt; from \$100 to \$600 the tax is five per cent; on any excess above \$600 the tax is progressive — one-tenth of one per cent increase on five per cent for every \$100; and where the excess is over \$95,600 the inheritance tax is 100 per cent! Now suppose the executor of this Hunt will sends the Oklahoma stocks and bonds out there for transfer from the testator to himself so that he may convert

them into cash with which to endow the Georgia memorial institution — the state of Oklahoma sets its mathematician at work with a table of Napier's logarithms, and in due season he reports that the state's share of that \$1,000,000 under the inheritance tax law is \$975,965! As the corporations would not transfer the securities until this amount was paid, the executor would have to raise it somehow and pay it over to the state; then, with the securities registered in his own name, he could sell them and if they brought par value, after the \$975,965 had been deducted, he would have just \$24,035 left for establishing the Georgia memorial. That would be quite bad enough — but up would step the sovereign state of New York and demand \$209,872.50 of this executor with only \$24,035 in his pocket as its tax share of the property of a dead New Yorker; and it could hold him personally responsible for the payment of the tax in full. It will thus be seen that inheritance taxes can more than eat up an entire estate — under certain circumstances they might bankrupt an inheritor and an executor both.

<sup>1</sup> *Per* Holmes, J., in *Blackstone v. Miller*, 188 U. S. 189, 23 S. Ct. 277, 47 L. Ed. 439.

<sup>2</sup> *See ante*, s. 29.

<sup>3</sup> *Per* Brown, J., in *United States v. Perkins*, 163 U. S. 625, 628, affirming *In re Merriam*, 141 N. Y. 479, 36 N. E. 505, in which the court cites the following cases: *Matter of Swift*, 137 N. Y. 77; *Matter of Hoffman*, 143 N. Y. 327; *Schoonfeld v. Lynchburg*, 78 Va. 366; *Strode v. Commonwealth*, 52 Pa. St. 181; *State v. Dalrymple*, 70 Md. 294, 299.

## CHAPTER XV.

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### NOTICE.

§ 71. Notice to Parties.

§ 72. Notice to Collecting Officers Unnecessary.

#### Sec. 71. Notice to Parties.

It is the prevailing view that parties taxed must have some notice of the proceedings,<sup>1</sup> and a right of appeal from the appraisal is insufficient,<sup>2</sup> although it has been held that notice is unnecessary on the ground that the tax does not take property of the legatee but merely imposes a condition upon its acquisition.<sup>3</sup> It is enough that the probate court has power to hear and determine all questions in relation to such tax that may arise, subject to appeal as in other cases,<sup>4</sup> and it is not fatal that the law vests a tax in the state at once on the death of the decedent, provided notice is given of the proceedings for collection.<sup>5</sup> Notice by registered mail to non-residents may be sufficient.<sup>6</sup> A defect in the statute consisting of want of notice may be cured by an amendment providing for notice without re-enacting the whole statute.<sup>7</sup>

<sup>1</sup>N. Y. St. 1885, c. 483, was attacked on the ground that no proper notice was given to the taxpayer. The court construes section 13 of the act liberally as requiring the surrogate to give notice to all persons interested, and it is further provided that immediately after he has assessed a tax the surrogate shall "give notice by mail to all parties." The section further provides a right of appeal and upon such appeal there is another opportunity to be heard. There is still further opportunity to be heard under section 16 of the act, which provides for the service of a citation on an order to show cause why the tax should not be paid. It is clear that the person thus cited may allege any reason whatever which shows that he ought not to pay it. He may answer that he has not had an opportunity to be heard at the appraisal and that therefore the tax as to him is void. He may show any error affecting the validity of the tax, or that he has never received and never will receive the inheritance nor legacy, and it would undoubtedly be a justification for refusing to pay that he absolutely renounced and refused to accept or receive the inheritance or legacy. If the surrogate should err in his decision there would be the right of appeal to the supreme court.

The court concludes that in all these ways there is sufficient provision for notice and hearing for all parties interested. *In re McPherson*, 104 N. Y. 306, 323,

10 N. E. 685, 58 Am. Rep. 502, followed in *State v. District Court*, 41 Mont. 357, 109 P. 438, 442. See further, *post*, s. 331.

<sup>2</sup>The court notices the claim that the tax is against the estate alone and remarks that the claim is not against the estate alone, but as a rule the administrator has nothing to do with the real estate. The section giving the district court jurisdiction to hear and determine questions relating to the tax does not afford such hearing as avoids the constitutional objection, as it does not give the court authority to attack the valuation for the purposes of taxation. *Ferry v. Campbell*, 110 Iowa 290, 81 N. W. 604, 50 L. R. A. 92. See *In re McPherson*, 104 N. Y. 321, 10 N. E. 685. *Contra*, *Hostetter v. State*, 26 Ohio Cir. Ct. 702.

Notice of the appointment of the appraiser and of a hearing on the appraisal is unnecessary. A right of appeal, however, implies notice. *In re Belcher*, 211 Pa. St. 615, 619, 61 A. 252.

<sup>3</sup>*Union Trust Co. v. Durfee*, 125 Mich. 487, 494, 84 N. W. 1101, 7 Detroit Leg. N. 597.

<sup>4</sup>*State v. Hamlin*, 86 Me. 495, 507, 30 A. 76, 41 Am. St. Rep. 569, 25 L. R. A. 632.

<sup>5</sup>*Trippet v. State*, 149 Cal. 521, 86 P. 1084, 8 L. R. A. (N. S.) 1210.

<sup>6</sup>Mont. Revised Code, s. 7738, gives sufficient notice to satisfy the constitution of the appraisal and assessment of the tax. The clause provides for notice "by registered mail," and the provision lays upon the court the duty to fix the time for the appraisement within such reasonable limits as will give every person interested the opportunity to be present and have a hearing if he so desires. This may be difficult, as where in the case at bar the testator died in Ireland where he resided, but the task is no more difficult for the court in Montana than for an Irish court. The statute further provides that after the tax has been assessed the court shall immediately give notice by registered mail, and this is an additional notice, which requires knowledge by the court of the names and whereabouts of all interested persons, and this knowledge it is presumed the court will get. *State v. District Court*, 41 Mont. 357, 109 P. 438, 442.

<sup>7</sup>*Ferry v. Campbell*, 110 Iowa 290, 81 N. W. 604, 50 L. R. A. 92.

## Sec. 72. Notice to Collecting Officers Unnecessary.

There is no constitutional requirement that the collecting officer be notified of the proceedings for assessment. The New York court of appeals has remarked on this subject: "That the doctrine of notice has any application in such proceedings to the case of the comptroller, is a proposition which has neither support in some requirement of the act, nor is justified by his relation to the subject-matter. He is not a person who has any interest in the property. He is an utter stranger to it. Contingently upon the refusal or neglect to pay a tax due under the act, it may become his duty to notify the district attorney to proceed to enforce collection. The performance of that duty, however, involves the idea of a failure of the surrogate to act at all, or of a neglect or refusal to obey the decree of the surrogate's court. It doubt-



less is very proper that the surrogate should cause the comptroller to be notified of the proceedings for appraisement and assessment, in order that a question which concerns the interests of the state may be tried out in the fullest possible manner; but nothing in the law, or in the relations of the comptroller, makes notice to him a prerequisite to a complete determination by the surrogate of the questions presented in the proceedings. The doctrine of notice is one which finds application when it is sought to tax the property of the citizen. When he is to be assessed, it is essential that he shall be given an opportunity to be heard, to establish a demand against him. As matter of fact, in this proceeding it appears that the comptroller was caused to be notified by the surrogate before he passed upon the question of the liability of these legacies to taxation; so that he had his opportunity to appear and be heard, if he had chosen to avail himself of it. I can see no more force in the argument as to an implied requirement of notice to him, than if the argument was made in the case of the assessment and taxation of property, under the general system of taxation in the state, that some state official should have notice and the opportunity to be heard."

*Per* Gray, J., in *In re Wolfe*, 137 N. Y. 205, 211, 33 N. E. 156, affirming 66 Hun 389, 29 Abb. N. Cas. 340, 21 N. Y. Suppl. 515, reversing 2 Connolly 600. Notice was later required even of orders of exemption. *In re Collins*, 104 N. Y. App. Div. 184, 93 N. Y. Suppl. 342.

## CHAPTER XVI.

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### RETROACTIVE LEGISLATION.

- § 73. Statutes Construed as Prospective.—Powers.
- § 74. Statutes Applying Retroactively to Estates in Process of Administration.
- § 75. Decisions of the Supreme Court.
- § 76. When Property is Distributed.
- § 77. Effect of Premature Distribution.
- § 78. After Title has Passed.
- § 79. Exemptions.
- § 80. Tax on Increase in Value.
- § 81. Location of Assets in State Insufficient Basis for Retroactive Legislation.
- § 82. Constitution Inapplicable to Conditions Prior to its Enactment.
- § 83. Effect of a Subsequent Treaty.
- § 84. Gift Inter Vivos.
- § 85. Remainder Interests Vested before Passage of Statute.
- § 86. Curative Act.

#### Sec. 73. Statutes Construed as Prospective.—Powers.

Inheritance taxes, like other laws, are prospective in operation unless expressly made retroactive, and apply only to the estates of decedents who have died since their enactment,<sup>1</sup> although passed before distribution,<sup>2</sup> and although the will is filed and probated after the passage of the statute.<sup>3</sup> So an amendment to the inheritance laws must be treated as prospective in the absence of language indicating it is retrospective in character.<sup>4</sup>

To construe an inheritance tax as applying to estates where distribution had not been made when the statute was passed, although the testator died before that time, would result in great inequality, as the liability to taxation would in many instances be determined by the fact whether proceedings for the settlement of the estate were commenced before or after the act went into effect. It is unnecessary to impute to the legislature a purpose to frame legislation which would thus have the practical effect to disturb vested rights and create a test of liability, thus depending upon accident and chance.<sup>5</sup>

A good example of the tendency to construe statutes prospectively may be found in Pennsylvania, where the act of 1850 declared that "the words 'being within this commonwealth' shall be so construed as to relate to all persons who have been at the time of their decease, or now may be, domiciled within this commonwealth, as well as to estates; and this is declared to be the true intent and meaning of said act." The court holds, in a well considered opinion, that 'this language should be applied prospectively to include the estate of one who died after its passage.'<sup>6</sup>

A tax on the execution of a power is valid although the power was created before the passage of the statute.<sup>7</sup>

<sup>1</sup> *Lacey v. Treasurer* (Iowa, 1911), 132 N. W. 843. *Gilbertson v. Ballard*, 125 Iowa 420, 101 N. W. 108. Cf. 110 Iowa 290. *Succession of Oyon*, 6 Rob. (La.) 504. *Succession of Deyraud*, 9 Rob. (La.) 357, relying on *Succession of Oyon*, 9 Rob. (La.) 501. *In re Lombard's Appeal*, 88 Me. 587, 34 A. 530. *Howe v. Howe*, 179 Mass. 546, 552, 55 L. R. A. 626. *Tilford v. Dickinson*, 79 N. J. L. 302, 79 Atl. 1119, reversing 1910 N. J. L., 75 Atl. 574. *In re Brooks*, 6 Dem. Surr. (N. Y.) 165, 20 N. Y. St. 149. *In re Travis*, 19 Misc. Rep. 393, 44 N. Y. Suppl. 349, 2 Gibbons 91. *Eury v. State*, 72 Ohio St. 448, 74 N. E. 650. *Cohen v. Brewster*, 203 U. S. 543, 550, 27 S. Ct. 174, 51 L. Ed. 310, affirming 115 La. 378, 39 S. 37.

<sup>2</sup> *Carter v. Whitcomb*, 74 N. H. 482, 69 A. 779, 17 L. R. A. (N. S.) 733n.

<sup>3</sup> *In re Lombard's Appeal*, 88 Me. 587, 34 A. 530.

<sup>4</sup> *Provident Hospital & Training Assn. v. People*, 198 Ill. 495.

<sup>5</sup> *In re Collateral Inheritance Tax*, 88 Me. 587, 34 A. 530. See, however, *Attorney General v. Stone*, 209 Mass. 186, 95 N. E. 395.

<sup>6</sup> *In re Line*, 155 Pa. St. 378, 380, 26 A. 728, 32 Wkly. Notes Cas. 376.

<sup>7</sup> *Orr v. Gilman*, 183 U. S. 278, 288, 22 S. Ct. 213, 46 L. Ed. 196 (affirming *In re Dows*, 167 N. Y. 227, 60 N. E. 439, 52 L. R. A. 433, 88 Am. St. Rep. 508).

[Retroactive statute of limitation, see *post*, s. 403.]

## Sec. 74. Statute Applying Retroactively to Estates in the Process of Administration.

It is competent for the state to impose a tax on inheritances which are *in gremio legis* before distribution, by a statute passed after the death of the decedent,<sup>1</sup> which is not void as an *ex post facto* law.<sup>2</sup> The tax may be imposed at any time from and including the death of the testator to distribution.<sup>3</sup> One reason given is that a right to take a legacy may be subject to the laws for the assessment and collection of a tax as a premium upon the right and privilege to receive the inheritance, inasmuch as it is subject to laws which authorize the taxation of the very property bequeathed.<sup>4</sup>

It has been held in certain cases that inheritance taxes cannot be made retroactive.<sup>5</sup>

<sup>1</sup> *Lacey v. State Treasurer* (Iowa, 1911), 121 N. W. 179, 185 (McClain, J., dissenting). *Succession of Oyon*, 6 Rob. (La.) 504. *Succession of Stauffer*, 119 La. Ann. 66, 43 S. 928. *Stevens v. Bradford*, 185 Mass. 439, 70 N. E. 425. *Attorney General v. Stone*, 209 Mass. 186, 95 N. E. 395 (applying only to cases in which tax remained unpaid). *Hostetter v. State*, 26 Ohio Cir. Ct. 702. *In re Short*, 16 Pa. St. (4 Harris) 63. *Commonwealth v. Smith*, 20 Pa. St. (8 Harris) 100 (increase of interest charged for non-payment). *Attorney General v. Middleton*, 3 Hurl. & N. 125.

La. St. 1904, c. 45, provided that the inheritance tax might be "collected on all successions not finally closed and administered upon." It was argued that the closing of the succession cannot affect the question as to when the rights of the heirs vested and cannot be the cause for differentiation among the heirs, and that such a classification is purely arbitrary and that, besides, such a classification rests on the theory that the tax is one on property, when in fact it is one on the right of inheritance. But the court holds that the property bequeathed was subject to the jurisdiction of the court until it had passed out of the succession of the testator, and it was not improper classification to make the tax depend upon a fact without which it would have been invalid. "In other words, those who are subject to be taxed cannot complain that they are denied the equal protection of the laws because those who cannot legally be taxed are not taxed." *Cahen v. Brewster*, 203 U. S. 543, 552, 27 S. Ct. 174, 51 L. Ed. 310, affirming 115 La. 378, 39 S. 37.

**When Estate not Finally Closed.** La. St. 1906, c. 109, p. 173, provides that the act shall affect all successions not finally closed or in which the final account has not been filed; so where the decedent died January 11, 1906, the succession was closed by a judgment February 7, 1906, recognizing the heirs ordering them to be put into possession, and as this was done before the La. St. 1906 went into effect, this succession was not affected by that statute but was governed by the La. St. 1904. *Succession of Pritchard*, 118 La. Ann. 883, 43 S. 537.

<sup>2</sup> *Carpenter v. Pennsylvania*, 17 How. 456.

<sup>3</sup> The court remarks that there is nothing in the case of *United States v. Perkins*, 163 U. S. 625, *Magoun v. Illinois Trust & Savings Bank*, 170 U. S. 283, *Knowlton v. Moore*, 178 U. S. 41, which restrains the power of the state as to the time of the imposition of the tax. "It may select the moment of death, or it may exercise its power during any of the time it holds the property from the legatee." Where the testator died in May, 1904, before the statute went into effect, the statute properly was made to impose the tax upon the estate. *Cahen v. Brewster*, 203 U. S. 543, 551, 27 S. Ct. 174, 51 L. Ed. 310, affirming 115 La. 378, 39 S. 37. See *Carpenter v. Commonwealth*, 17 How. 456, 462.

<sup>4</sup> *Gelsthorpe v. Furnell*, 20 Mont. 299, 51 P. 267, 270, 39 L. R. A. 170. The court relies upon *In re McPherson*, 104 N. Y. 306, 10 N. E. 685, 58 Am. Rep. 502.

<sup>5</sup> *Pullen v. Commissioners*, 66 N. C. 361, 362. See *In re Pell*, 171 N. Y. 48, 60, 63 N. E. 789, 57 L. R. A. 540, 89 Am. St. Rep. 791, reversing 60 N. Y. App. Div. 286, 70 N. Y. Suppl. 195.

A Pennsylvania intestate died leaving only collateral relatives and an illegitimate son who was legitimized by the legislature after the death of the intestate. The estate descended and vested in the collateral heirs, and the state was entitled to collect the collateral inheritance tax. The moment a man dies leaving heirs

lineal or collateral, his estate vests and is beyond the constitutional power of the legislature. *Galbraith v. Commonwealth*, 14 Pa. St. (2 Harris) 258.

### Sec. 75. Decisions of the Supreme Court.

The validity cannot be questioned of a tax imposed on personal property in the hands of the executor or administrator before distribution. Our supreme court has affirmed this doctrine in an early decision and again quite recently.

In *Carpenter v. Commonwealth*, 17 How., the court remarks at page 462: It is true "that the rights of donees under a will are vested at the death of the testator . . . but until the period for distribution arrives, the law of the decedent's domicile attaches to the property, and all other jurisdictions refer to the place of the domicile as that where the distribution should be made. . . . The personal estate, so far as it has a determinate owner, belongs to the executor. The rights of the donee are subordinate to the conditions, formalities and administrative control prescribed by the state in the interest of its public order, and are only irrevocably established upon its abdication of this control, at the period of distribution. If the state, during this period of administration and control by its tribunals and their appointees, thinks fit to impose a tax upon the property, there is no obstacle in the constitution and laws of the United States to prevent it."<sup>1</sup>

In a recent case it appeared that the Louisiana statute of 1904 became operative in New Orleans July 30, 1904, and the court holds that it embraced all successions, those opened and not settled as well as to be opened, and that it is not void as retroactive on that ground. The court holds that the power to tax is without limit in its force and in the extent of its search; that the legatees acquire no vested right in the property bequeathed which could enable them to successfully defend their inheritance against the demand of the state. It was property within the limits of the state which the state could tax for the purposes mentioned until it passed out of the succession of the testator. The court notes that it does not appear just to tax all successions opened since the statute went into effect and not yet closed, and not tax those that have been opened and closed in that time. The court replies that it would be utterly impracticable to tax successions that have been closed, for the reason that there is no succession remaining. The tax is not a tax upon the property itself but upon its transmission. It is a tax upon the right to dispose of property and

"as long as the succession — the ideal or juridical person — remains in the hands of executors, the legislative power may classify it and subject it to a tax."<sup>2</sup>

<sup>1</sup> *Per* Campbell, J., in *Carpenter v. Commonwealth*, 17 How. 456, 462.

<sup>2</sup> *Succession of Levy*, 115 La. 378, 39 S. 37, affirmed *Cahen v. Brewster*, 203 U. S. 543, 552, 27 S. Ct. 174, 51 L. Ed. 310.

### Sec. 76. When Property is Distributed.

No inheritance tax will be construed as affecting property already distributed.

Where the testator died in 1903 and his property was in large part distributed before the passage of La. St. 1904, the tax is not operative as to such property, as the statutes should not be construed as retroactive or as impairing vested rights. *Succession of Stauffer*, 119 La. Ann. 66, 43 S. 928.

### Sec. 77. Effect of Premature Distribution.

An unauthorized distribution will not deprive the state of jurisdiction to tax. In an Iowa case the testator died in 1897, after the passage of the collateral inheritance law, but before it had been made valid and enforceable by amending the unconstitutional provision as to filing appraisement. Before this amendatory act went into effect, the executors were appointed and distributed the estate without any authority from the probate court, and before the executors had filed proof of notice of their appointment or an inventory, and before the expiration of the time for filing claims. The probate court still had jurisdiction of the estate and the payment could not affect the inheritance law where no final accounting was made until after the amendatory act went into effect.

*Montgomery v. Gilbertson*, 134 Iowa 291, 111 N. W. 964, 10 L. R. A. N. S. 986.

### Sec. 78. After Title has Passed.

It has been decided in Iowa that a retroactive statute cannot operate to affect the title to real estate which passes on death,<sup>1</sup> or to bequests in personal property vesting before the act took effect.<sup>2</sup>

<sup>1</sup> Where the testator died after the enactment of Iowa St. 1896, c. 28, and before the amendment enacted by Iowa St. 1898, c. 37, and where the first statute was void for lack of notice on appraisal, the court holds that the amendment although retroactive in form cannot authorize a legal inheritance tax on real estate of the testator. The court distinguishes the case of *Ferry v. Campbell*, 110 Iowa 290, 81 N. W. 604, 50 L. R. A. 92, as that case applied solely to personal property. The court shows that title to personal property does not pass to the legatees or

distributees until actual distribution, while real estate passes at once on the death of testator without any further action by the administrator. The amending statute is not in the nature of a curative act, but purports only to aid in the collection of a valid tax. If then the land was not subject to or liable for the payment of the tax the act has no application. At the death of the testator there was no remedy by which a tax could be fixed or enforced. A tax that cannot be enforced by any remedy is no tax at all. If a tax on succession, the amount of which cannot be ascertained, may relate back one year, it may stretch back over a period of twenty or any number of years and the citizens never know with any degree of certainty what burdens are to be imposed. The court distinguishes the case *Gelsthorpe v. Furnell*, 20 Mont. 299, 51 P. 267, 39 L. R. A. 170, as it appears from that case that real estate in Montana is subject to the control of the court and held in possession by the administrator until the order of distribution. *Herriott v. Potter*, 115 Iowa 648, 89 N. W. 91. To the same effect see *Lacey v. Treasurer* (Iowa, 1911), 132 N. W. 843.

<sup>2</sup> *Lacey v. State Treasurer* (Iowa, 1911), 132 N. W. 843.

### Sec. 79. Exemptions.

A retroactive extension of the exemptions from tax was affirmed in Maryland but found void under the peculiar provisions of the California statute. The Maryland statute declared that the collateral inheritance tax shall not be imposed where property may pass from a deceased wife to her surviving husband; and that in all cases where such a tax has been "heretofore claimed of but not actually paid by the husband of any decedent," such claim shall be released or abandoned. The court says that this is not exactly an exemption, but a release, and so does not fall within the rule that exemptions are to be strictly construed. The law is valid and the statute applied to a case which is pending on appeal when the law was passed.<sup>1</sup>

On the other hand, a California statute extending the exemptions of the existing law and providing that the exemptions shall apply to all cases where taxes have not been paid under existing law is void as in violation of the constitution, which provides that the legislature shall not make any gift or donation of any public money or thing of value. Under the statute the inheritance tax became the property of the state on the death of the decedent.<sup>2</sup>

<sup>1</sup> *Montague v. State*, 54 Md. 481.

<sup>2</sup> *In re Stanford's Estate*, 126 Cal. 112, 58 P. 462, 45 L. R. A. 788. See further, s. 88

### Sec. 80. Tax on Increase in Value.

The Montana act of 1897 provided that a tax should be levied and collected "upon the increase of all property arising between the date of death and the date of the decree of distribution." The

argument was made that the words "increase of all property" included only those estates the property of which is of such a character that it increases in kind, as, for instance, when it consists in whole or in part of live stock, such as sheep, cattle, etc. But the court holds that, following the common acceptance of the word "increase," an increase means increase in value as well as increase in kind. The court upholds the method pursued by the lower court, which appointed an appraiser to ascertain the value of the estate for the purpose of enabling it to fix the amount of inheritance tax to be paid by the executor prior to the final distribution among its devisees.

*In re Tuohy*, 35 Mont. 431, 90 P. 170. See further, *post*, s. 334.

### **Sec. 81. Location of Assets in State Insufficient.**

The testator, a resident of New Jersey, died there March 19, 1882, leaving personal property in New York state, and some of the assets were not removed to New Jersey until after May 1, 1892, when the New York statute of 1892, c. 399, became operative. The court holds that the fact that the property was in New York when the statute of 1892 went into effect does not make it subject to tax, as this would render the statute retroactive. "If the right of taxation because of decease does not exist at the time of death, it never can be thereafter imposed upon the ground of such death."

*In re Pettit*, 171 N. Y. 654, 63 N. E. 1121, affirming 65 N. Y. App. Div. 30, 72 N. Y. Suppl. 469.

### **Sec. 82. Constitution Inapplicable to Conditions Prior to Its Enactment.**

The Louisiana constitution of 1898 provided that the inheritance tax could not be enforced when the property in question shall have borne its just proportion of taxes prior to that. These provisions and the provisions of the Louisiana statutes carrying these articles of the constitution into effect do not extend or reach back to conditions anterior to the constitution itself, and where taxes due in 1878 and 1883 on certain lands had not been paid the collector urged that it made no difference how far back in the past the failure to pay taxes may have occurred nor who the owners of the lot may have been at that time; but the court holds that taxes due before the passage of the constitution do not affect the question of inheritance tax.

*Succession of Westfeldt*, 122 La. Ann. 836, 48 S. 281.



**Sec. 83. Effect of a Subsequent Treaty.**

The validity of an inheritance tax levied under the laws of Louisiana upon the estate of one who died in 1848 is not affected by a treaty between the United States and France, ratified in 1853, providing that Frenchmen shall in no case be subject to taxes on transfers, inheritances or others, different from those paid by the citizens of the United States. The court holds that the tax vested in the state at the death of testator, and that the property vested in the petitioner at that time as heir, and that therefore the treaty had no effect upon it.

*Prevost v. Greneaux*, 19 How. 1.

**Sec. 84. Gifts Inter Vivos.**

An inheritance tax is not retroactive to cover prior gifts *inter vivos* made before the passage of the act.<sup>1</sup> In a New York case the deceased executed a trust deed in 1875 transferring all his property to trustees in contemplation of his then pending marriage, by the terms of which the net income of all the property was made payable to the deceased for his life and at his death the principal was to be paid to his widow and the issue of the marriage. The deceased died in 1901. The marriage took place before 1885. The right as a property right to take the gifts, when the time for possession and enjoyment arrived, had fully accrued at the marriage and the birth of the children, free from any existing tax; subsequent legislation imposing such a tax must be considered unconstitutional. No reservation being made of the power of revocation, it became operative and effective as a grant upon execution and delivery, wholly irrespective of the time when possession was to be given and the estate conveyed.<sup>2</sup>

<sup>1</sup> *In re Birdsall*, 22 Misc. Rep. 180, 49 N. Y. Suppl. 450, 2 Gibbons 293.

<sup>2</sup> *In re Craig*, 181 N. Y. 551, 74 N. E. 1116, affirming 97 N. Y. App. Div. 289, 89 N. Y. Supp. 971. See also, *Lacey v. Treasurer* (Iowa, 1911), 132 N. W. 843.

**Sec. 85. Remainder Interests Vested before Passage of Statute.**

No tax accrues on a vested remainder where the testator dies before the passage of the statute and the life tenant dies afterwards,<sup>1</sup> and so of a contingent interest,<sup>2</sup> or of a legacy to be paid when the legatee reaches twenty-one,<sup>3</sup> or of vested remainders under a contract.<sup>4</sup>

An attempt to lay such a tax in New York was held void so far as the remainders had vested, the court remarking: "In the case before us it is an undisputed fact that these remainders had vested in 1863, and the only contingency leading to their divesting was the death of a remainderman in the lifetime of the life tenant, in which event the children of the one so dying would be substituted. If these estates in remainder were vested prior to the enactment of the Transfer Tax Act there could be in no legal sense a transfer of the property at the time of possession and enjoyment. This being so, to impose a tax based on the succession would be to diminish the value of these vested estates, to impair the obligation of a contract and take private property for public use without compensation.<sup>5</sup>

<sup>1</sup> *Miller v. McLaughlin*, 141 Mich. 425, 104 N. W. 777, 12 Detroit Leg. N. 501. *In re Forsyth*, 10 Misc. Rep. 477, 32 N. Y. Suppl. 175. *In re Travis*, 19 Misc. Rep. 393, 44 N. Y. Suppl. 349, 2 Gibbons 91. *In re Meyer*, 83 N. Y. App. Div. 381, 82 N. Y. Suppl. 329. *In re Hitchins*, 43 Misc. 485, 89 N. Y. Suppl. 472 (vested through defeasible interest in remainder). *In re Backhouse*, 185 N. Y. 544, 77 N. E. 1181, affirming 110 N. Y. App. Div. 737. 96 N. Y. Suppl. 466. *In re Langdon*, 153 N. Y. 6, 46 N. E. 1034, 11 N. Y. App. Div. 220, 43 N. Y. Suppl. 419. *Vanderbilt v. Eidman*, 196 U. S. 480, 501, 25 S. Ct. 331, 49 L. Ed. 563. See, however, *Cohen v. Brewster*, 203 U. S. 543, 551, 27 S. Ct. 174. 51 L. Ed. 310, affirming 115 La. 378, 395, more fully reported, *ante*, s. 75.

Where the children of the testator took vested interests subject to open and let in after-born children on the one hand, and on the other hand subject to be defeated by death without issue, it is obvious that a right of succession to the estates in remainder passed at once on the death of the testator; and where the testator died in 1876, these remainder interests were not subject to the inheritance tax.

The court distinguishes *In re Curtis*, 142 N. Y. 219, on the ground that that case did not decide as claimed that such remainder interests were taxable when they became beneficial interests. It was claimed that the beneficial interests did not pass until the termination of the life estates. And the court says that in one sense that is true, but says that a necessary delay in appraisal as provided for by the statute of 1892 is a very different matter from the provision that no beneficial right of succession passed at all until after the death of the life tenants. To include such cases would give the statute a retrospective operation and subject to taxation rights of succession which accrued before the statute came into existence. To say that no beneficial interest passed into hands where it was taxable is very different from saying that no beneficial interest passed at all. *In re Seaman*, 147 N. Y. 69, 41 N. E. 401, reversing 87 Hun 619.

<sup>2</sup> *Eury v. State*, 72 Ohio St. 448, 454, 74 N. E. 650.

<sup>3</sup> *In re Cogswell*, 4 Dem. Surr. (N. Y.) 248.

<sup>4</sup> *Lacey v. Treasurer* (Iowa, 1911), 132 N. W. 843.

<sup>5</sup> *Per Bartlett, J.*, in *In re Pell*, 171 N. Y. 48, 55, 63 N. E. 789, 57 L. R. A. 548, 89 Am. St. Rep. 791, reversing 60 N. Y. App. Div. 286, 70 N. Y. Suppl. 196.

**Sec. 86. Curative Act.**

A curative act to heal a constitutional flaw in a statute may be retrospective in its operation,<sup>1</sup> except possibly where it would operate on real estate, the title to which has passed to the devisee.<sup>2</sup>

<sup>1</sup> Although a judgment restraining the collection of an inheritance tax on the ground that the statute was unconstitutional has been obtained, still the legislature may thereupon cure the defect in the statute by a retroactive amendment to it, and the supreme court may then reverse the judgment and permit the tax to be collected. A judgment is not of itself a contract in a constitutional sense so that its effect cannot be taken away by legislation. *Ferry v. Campbell*, 110 Iowa 290, 81 N. W. 604, 50 L. R. A. 92.

<sup>2</sup> *Herriott v. Potter*, 115 Iowa 648, 89 N. W. 91.

## CHAPTER XVII.

### REPEAL OR AMENDMENT.

- § 87. What Law Governs.
- § 88. Amendment Extending Exemptions.
- § 89. Amendment without Repeal.
- § 90. Amendment does not Affect Validity of Tax already Imposed.
- § 91. Repealing Act a Continuation of Earlier Act.
- § 92. Under California Constitution Prohibiting Surrender of Public Rights.
- § 93. Implied Repeal by New Complete Act or Revenue Law.
- § 94. Repeal Prevents Subsequent Recovery of Taxes Due.
- § 95. Income Due after Repeal.
- § 96. Effect of Repeal after Appeal Taken.
- § 97. Saving Clause.

#### Sec. 87. What Law Governs.

The tax is governed by the statute in force at the death of the testator, although this may be repealed<sup>1</sup> or amended before the imposition of the tax.<sup>2</sup> An attempted amendment by an unconstitutional statute does not affect the original act.<sup>3</sup>

<sup>1</sup>*Quessart v. Canonge*, 3 La. 560.

La. St. 1828, enacting a ten per cent tax, was repealed in 1830, but in the meantime the testator had died and the tax was held properly charged upon the estate. Whatever may be the effect of the repeal of a law in criminal matters, it leaves all civil rights acquired under the law unaffected. A tax cannot be assimilated to a forfeiture which presupposes an offence. *Arnaud v. Arnaud*, 3 La. 336.

<sup>2</sup>*Warrimer v. People*, 6 Dem. Surr. (N. Y.) 211. *In re Moore*, 90 Hun 162, 35 N. Y. Suppl. 782.

<sup>3</sup>*Eastwood v. Russell* (N. J. 1911), 81 A. 108.

#### Sec. 88. Amendment Extending Exemptions.

An amendment extending exemptions has no effect on an estate of one dying before the passage of the amending act unless expressly so provided.

*Provident Hospital & Training Assn. v. People*, 198 Ill. 495. *Connell v. Crosby*, 210 Ill. 380, 71 N. E. 350. *In re Ryan*, 3 N. Y. Suppl. 136. *In re Thompson*, 14 N. Y. St. Rep. 487. *In re Arnett*, 49 Hun 599, 18 N. Y. St. 576, 2 N. Y. Suppl. 428. *In re Wolfe*, 66 Hun 389, 29 Abb. N. Cas. 340, 21 N. Y. Suppl. 515, affirming 15 N. Y. Suppl. 539 (s. c. 137 N. Y. 205, 33 N. E. 156), where the assessment had been completed before the amendment.

The fact that the language in the statute of 1887 declares that the statute of 1885 "is amended so as to read as follows" is immaterial, as is also the fact that the statute of 1887 closes with the words "all acts and parts of acts inconsistent with the provisions of this act are hereby repealed." *In re Miller*, 110 N. Y. 216, 223, 18 N. E. 139, affirming 47 Hun. 394. See *Kissam's Estate*, 3 N. Y. Suppl. 135, 6 Dem. Surr. 171. Cf. *In re Ryan*, 3 N. Y. Suppl. 136. See also *In re Stanford's Estate*, 126 Cal. 112, 58 P. 462, 45 L. R. A. 788. *Montague v. State*, 54 Md. 481. See *ante*, s. 79.

### **Sec. 89. Amendment without Repeal.**

An amendment in the absence of repeal operates to render the law continuous, with the result that a tax accrued under the former law remains unaffected.

*Succession of Pritchard*, 118 La. Ann. 883, 43 S. 537. *In re Prime*, 136 N. Y. 347, 355, 32 N. E. 1091, 18 L. R. A. 713, affirming 64 Hun 50.

### **Sec. 90. Amendment does not Affect Validity of Tax Already Imposed.**

An amendment will not of itself affect the validity of a tax imposed under a prior act.

*Provident Hospital & Training Assn. v. People*, 198 Ill. 495. *In re Cager*, 111 N. Y. 343, 347, 19 N. Y. St. 497, 18 N. E. 866, affirming 46 Hun 657.

*Estate of Stanford*, 126 Cal. 112, 58 P. 462, 45 L. R. A. 788, is explained as not holding that the law in question provides that the state shall succeed as heir in certain classes of cases to five per cent of the property of the decedent. The real meaning and effect of the decision is that the law establishes the succession tax in certain cases and that the right of the state to such tax vests immediately upon the death of the ancestor or testator, and hence that the repeal of the law does not affect the right of the state to the tax. *In re Martin's Estate*, 153 Cal. 225, 94 P. 1053. *In re Bowen's Estate* (Cal. 1908), 94 P. 1055.

### **Sec. 91. Repealing Act a Continuation of Earlier Act.**

So far as the later act is the same or similar to the earlier, the later is to be construed a continuance of the other and all provisions inconsistent are repealed.

*In re Howard*, 80 Vt. 489, 68 A. 513. See *In re Jones*, 54 Misc. 202, 105 N. Y. Suppl. 932.

Cal. St. 1905, c. 314, substantially enacted the provisions of the former law respecting the payment and collection of succession taxes, and was done with the knowledge of the existence of certain uncollected taxes and with the intent to continue in force a mode and means for their collection. And the court has the authority under this statute to order the executor to deduct from certain

legacies the amount of the tax, especially in view of St. 1905, c. 85, to the effect that the court must be satisfied that any inheritance tax has been paid before any decree or distribution of an estate is made. *In re Bowen's Estate* (Cal. 1908), 94 P. 1055.

The provision of s. 8 of the act of 1893, that the estate shall not be distributed until the administrator produces a receipt showing that a tax has been paid, is also found in s. 11 of the repealing act of 1905. This provision is therefore simply continued in force by the act of 1905, and therefore the estate of one who died before the repealing act was passed cannot be distributed until the tax is paid. After the repealing act went into effect the repealing act could not renounce the vested right of the state to the inheritance tax. *In re Lander*, 6 Cal. App. 744, 93 P. 202.

## Sec. 92. Under California Constitution Prohibiting Surrender of Public Rights.

The California constitution prohibiting any surrender of property due the state prevents the operation of a repealing act upon it.

*In re Stanford's Estate*, 126 Cal. 112, 58 P. 462, 45 L. R. A. 788. *In re Lander*, 6 Cal. App. 744, 93 P. 202. *In re Martin's Estate*, 153 Cal. 225, 94 P. 1053. *In re Bowen's Estate* (Cal. 1908), 94 P. 1055.

The right of the state to the inheritance tax under the law of 1893 is immediately upon the death of the decedent a vested right which cannot be surrendered by a legislative act and no amendment or extension can take away this right. So a tax due before the statute of 1905 was passed can be collected after it is passed. *Trippet v. State*, 149 Cal. 521, 86 P. 1084, 8 L. R. A. (N. S.) 1210.

## Sec. 93. Implied Repeal by New Complete Act or Revenue Law.

A statute purporting to cover the whole subject of inheritance taxes is a substitute and impliedly repeals the existing law.<sup>1</sup> The Tennessee inheritance law of 1893 was repealed by the general revenue law passed later on the same day,<sup>2</sup> and revived by the omission of inheritance taxes from the general revenue acts of 1895 and 1897.<sup>3</sup>

<sup>1</sup>*Succession of Frigalo*, 123 La. Ann. 71, 48 S. 652.

The court holds that the Virginia statute of 1856, imposing taxes, is a perfect tax law imposing all taxes intended to be imposed for the support of the government, but it omitted the tax on collateral inheritances for the purpose of discontinuing it, and therefore it repealed by implication the existing inheritance law. *Fox v. Commonwealth*, 16 Gratt. (Va.) 1.

<sup>2</sup>*Bailey v. Drane*, 96 Tenn. (12 Pickle) 16, 33 S. W. 573.

<sup>3</sup>*Zickler v. Union Bank & Trust Co.*, 104 Tenn. 277, 57 S. W. 341.

**Sec. 94. Repeal Prevents Subsequent Recovery of Taxes Due.**

No proceedings can be maintained after repeal in the absence of a saving clause to collect a tax accrued before repeal.

*Friend v. Levy*, 76 Ohio St. 26, 51, 80 N. E. 1036.

The Maryland code, ss. 106, 107, was amended by Md. St. 1860, c. 163, providing that where the executor renounced his commission he shall not be taxed thereon. Where the repealing section was enacted before the passage of the executor's account, the executor, having renounced his commission, was not liable to the state tax of ten per cent on such commissions. *Owings v. State*, 22 Md. 116.

**Sec. 95. Income Due after Repeal.**

Income to be received only after the repeal is not subject to tax.

*Union Trust Co. of San Francisco v. Lynch*, 148 Fed. 49, affirmed 164 Fed. 161, 90 C. C. A. 147, 214 U. S. 523, 29 S. Ct. 702, 53 L. Ed. 1067.

**Sec. 96. Effect of Repeal after Appeal Taken.**

Where a new law was passed in California in 1905, after a case was taken to the supreme court at Washington repealing the prior statutes without any clause saving the right of the state in respect to charges already accrued to the state, the court was asked to reverse the judgment of the California court on the ground that the state no longer had any authority whatever to levy an inheritance tax. The supreme court holds that it is its duty to decide the federal question and to leave the local question to the supreme court of California.

*Campbell v. California*, 200 U. S. 87, 26 S. Ct. 182, 50 L. Ed. 382.

**Sec. 97. Saving Clause.**

A saving clause is often inserted in a repeal, preserving all taxes due under the repealed statute.<sup>1</sup>

The fact that under the United States statute of 1898 the tax was not due and payable for a year after the death of the testator does not free the estate from the tax where the testator died within a year before the passage of the repealing act of 1902. The testator died March 15, 1902. An inheritance tax was paid January 17, 1905. The saving clause of section 8 of the act of 1902, that all taxes or duties imposed prior to the taking effect of that act shall be subject to the provisions of section 30 of the statute of 1898, operated to save a vested right to the immediate possession or enjoyment of a legacy.<sup>2</sup>

A very peculiar result was reached in Vermont recently. The testator died June 1, 1904, and Vermont statute 1904, c. 30, took effect December 9, 1904. It was claimed that the estate was not affected by the statute of 1904, but the court says that so far as the provisions of the two acts are the same or similar, the later act is to be construed as a continuance of the other, and all acts or parts of acts inconsistent with the provisions of the later act were repealed. But such repeal was not to affect the validity of a tax accrued or accruing at the time of the enactment thereof, and the court finds that since the law of 1896 did not include debts due from non-residents, the tax here in controversy was not accrued, nor was it accruing before the provisions of the new act, including such debts, took effect, and therefore the estate was subject to the statute of 1904.<sup>3</sup>

*Effect of Saving Clause on Remainders.*—A saving clause in a repeal saving all rights which had accrued will not save remainders where the life tenant died after the repeal, as the words include only cases where the legacy is actually demandable,<sup>4</sup> and the same result is reached where the legacy is only payable on the legatee reaching a certain age which accrues after the repeal,<sup>5</sup> or where the estate was not settled till after the repeal.<sup>6</sup>

*Clause Saving only Estates where Inventory Already Filed.*—A provision that the statute be repealed, "except as to estates in which the inventory has already been filed at the date of the passage of this act," is unequal and therefore void within the decision in *State v. Ferris*, 53 Ohio St. 314.<sup>7</sup>

<sup>1</sup>*Herts v. Woodman*, 218 U. S. 205, 224, 30 S. Ct. 621.

"If the repealer was without any saving clause, there could be no doubt that the tax in question would be invalid, because such a repealer would abolish the machinery by which the assessment could be laid, and such special taxes as these can only be imposed by the machinery provided by the legislature." *Hoyt v. Hancock*, 65 N. J. Eq. 688, 55 A. 1004. See, however, *In re Jones*, 54 Misc. 202, 105 N. Y. Suppl. 932, holding that assessment could be made under a law repealed without a saving clause under the general statutory construction law.

<sup>2</sup>*Herts v. Woodman*, 218 U. S. 205, 30 S. Ct. 621.

*Contra, McCoach v. Bamberger*, 161 Fed. 90, affirming 142 Fed. 120, 73 C. C. A. 610. *Tilghman v. Eidman*, 131 Fed. 651, affirmed in 203 U. S. 580, 27 S. Ct. 779, 51 L. R. A. 326. *United States v. Marion Trust Co.*, 205 U. S. 539, 27 S. Ct. 794, 51 L. Ed. 119, affirming 142 Fed. 120, 73 C. C. A. 610, 135 Fed. 866, 127 Fed. 386. *United States v. Marion Trust Co.*, 143 Fed. 301, 74 C. C. A. 539, affirmed in 206 U. S. 566, 27 S. Ct. 794, 51 L. Ed. 1191. *United States v. Stephenson*, 212 U. S. 572.

<sup>3</sup>*In re Howard*, 80 Vt. 489, 68 A. 513.



<sup>4</sup>*Clapp v. Mason*, 94 U. S. 589, 24 L. Ed. 212, Fed. Cas. 9233. *Mason v. Sargent*, 104 U. S. 689, 20 L. Ed. 894. *United States v. Rankin*, 3 McCrary 113, 8 Fed. 872. *United States v. Hazard*, 8 Fed. 380. *United States v. Brice*, 8 Fed. 381. See *United States v. Townsend* (1881), 14 Phila. (Pa.) 493, 8 Fed. 306.

<sup>5</sup>*United States v. New York Ins. & Trust Co.*, 9 Ben. 413, Fed. Cas. 15, 873 *Sturges v. United States*, 117 U. S. 363.

<sup>6</sup>*United States v. Kelley*, 28 Fed. 845.

<sup>7</sup>*Friend v. Levy*, 76 Ohio St. 26, 49, 80 N. E. 1036.

## CHAPTER XVIII.

### TRANSFERS OTHER THAN BY WILL.

- § 98. Transfers Inter Vivos and Causa Mortis.
- § 99. What Law Governs Deed.
- § 100. Interests under Deed Dependent on Death.
- § 101. Deed Dependent on Will.
- § 102. Trust Deed.
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- § 104. Sale.
- § 105. Joint Deposit.
- § 106. Compromise of Interests under Will.
- § 107. Interest in Insurance or Beneficial Society.
- § 108. Curtesy or Dower, Statutory Rights of Surviving Spouse.
- § 109. Rights in Community Property.
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#### Sec. 98. Transfers Inter Vivos and Causa Mortis.

The inheritance tax acts commonly cover transfers *inter vivos* made in contemplation of death,<sup>1</sup> and include gifts *causa mortis*,<sup>2</sup> but are not limited to gifts *causa mortis*.<sup>3</sup>

<sup>1</sup>Under Ill. St. 1895, p. 301, s. 1, a gift may be subject to tax if made in contemplation of the death of the donor although the transfers were absolute and were accepted by the donees who entered into possession and ownership of the property transferred and after the transfers the donor had no interest in property. It was claimed that a gift *causa mortis* is a transfer of property made without consideration in contemplation of death, and that the stipulation that the gift was absolute prevents it from being a gift *causa mortis*. But the court finds that as the gifts were made in contemplation of death they were gifts *inter vivos* made in contemplation of death and within the designation of gifts *causa mortis*. *Merrifield v. People*, 212 Ill. 400, 72 N. E. 446.

A deposit in a savings bank in trust for another is taxable so far as it represents deposits made by the decedent out of his own funds, but not so far as it was contributed by a third party. *In re Rosenberg*, 114 N. Y. Suppl. 726.

<sup>2</sup>*In re Edwards*, 146 N. Y. 380, 41 N. E. 89, affirming 85 Hun 436, 66 N. Y. St. Rep. 231, 32 N. Y. Suppl. 901.

[Interests under trusts, see *post*, s. 235.]

<sup>3</sup>*In re Benton*, 234 Ill. 366, 84 N. E. 1026. *In re Birdsall*, 22 Misc. Rep. 180, 49 N. Y. Suppl. 450, 462, 2 Gibbons 293. *In re Palmer*, 117 N. Y. App. Div. 360, 102 N. Y. Suppl. 236. *In re Price*, 62 Misc. 149, 116 N. Y. Suppl. 283.

### Sec. 99. What Law Governs Deed.

A trust deed for the grantor for life with remainder over to others constitutes a transfer to the remaindermen at the date of the execution of the deed and is governed by the law in force at that time.

*In re Craig*, 181 N. Y. 551, 74 N. E. 1116, affirming 97 N. Y. App. Div. 289, 89 N. Y. Suppl. 971.

The testator conveyed property in trust to assign the property as the grantor might by last will appoint, and for want of such appointment to her heirs, reserving no right of revocation in the deed. The deed was signed in 1857 in Pennsylvania and subsequently the grantor moved to New York, where she lived until her death in 1885. The court holds that this is a deed intended to take effect after the death of the grantor, within the meaning of the statute of 1826. *Commonwealth v. Kuhn*, 2 Pa. Co. Ct. 248.

See further, *ante*, ss. 25, 26.

### Sec. 100. Interests under Deed Dependent on Death.

A deed is not subject to tax unless it is dependent on the death of the grantor and to take effect at his death.<sup>1</sup>

It seems to be clear that where the statute taxes generally transfers "on death," this subjects to taxation interests under a deed where the interests depend upon and date from the death of the grantor,<sup>2</sup> although the beneficiary may have possession and enjoyment of the income before the death of the decedent.<sup>3</sup> The same result is reached, of course, where the interests depend on two contemporaneous instruments construed together as one.<sup>4</sup>

<sup>1</sup>Where a grantor made a deed of an undivided three-fourths interest of land to a brother and two sisters, reserving a one-fourth interest to himself, and delivered it to a third person with instructions to record it and sell the land and divide the proceeds equally among the grantees and himself, and he died before it was recorded or the land sold, the deed is not one taking effect in possession or enjoyment after the death of the grantor and is therefore not subject to the inheritance tax. The statute relates plainly to estates granted in deeds or conveyances which in some way make the estate granted dependent on the grantor's death; that is, to interests in real estate the possession or enjoyment of which is postponed until after the death of the grantor. The deed in question contained no reference to the death of the grantor and there was nothing in the conveyance which indicates that it was the grantor's purpose to postpone possession or enjoyment of the interests granted until after his death. *In re Bell*, (Iowa, 1911,) 130 N. W. 798.

<sup>2</sup>*In re Line*, 155 Pa. St. 378, 393, 26 A. 728, 32 Wkly. Notes Cas. 376. The court quotes with approval *DuBois's Appeal*, 121 Pa. St. 386.

*In re Maris*, 14 Pa. Co. Ct. 171, 3 Pa. Dist. 33. (1893.)

The testator made his will December 1, 1881, bequeathing his estate to certain collateral relatives and for religious and charitable purposes. August 14,

1882, he executed a deed, assigning all his property to trustees for their own use and benefit during his life, and at his death to hold the same for the uses and purposes of his will. The court holds that the property is subject to a collateral inheritance tax, as the deed was not to take effect in enjoyment until after the death of the testator. *Appeal of Seibert*, 110 Pa. St. 329, 1 A. 346.

Where the decedent transferred her property to trustees in trust to collect the income and apply the same to her use during her life and after her death to divide and pay over the same and the proceeds among her three nieces, reserving the power to modify the instrument, the court holds that it is not important to determine whether the trust instrument was made in contemplation of death. The real question is whether the remainders which the nieces took were intended to "take effect in possession or enjoyment" at or after the death of the donor. And the court holds that it is quite clear that these nieces did take by an instrument intended to take effect at or after the death of the donor. *In re Green*, 153 N. Y. 223, 47 N. E. 292, reversing 7 N. Y. App. Div. 339.

<sup>3</sup>Where a trustee gives the income of his estate to beneficiaries for life and the principal to them at his death, it is as to the principal a transfer intended to take effect at the death, and hence subject to the inheritance tax. *In re Patterson*, 127 N. Y. Suppl. 284.

In 1893 the decedent deposited certain sums of money with a trust company under a trust agreement that the income was to be paid to a certain third party and at the expiration of five years from the date of the agreement the decedent might withdraw the whole trust fund by giving the company written notice of an intention so to do six months before that time, and the company could pay off the trust fund if it chose by giving him a like notice of its intention. If no notice was given by either party, the trust fund was to remain during another term of five years and the right of withdrawing or paying off the principal sum might be exercised at intervals of five years from the date of the agreement. In case of the death of the decedent before the termination of the trust, the trust fund was to be payable to a certain third party. The decedent died before the trust fund was terminated and the court holds that a tax is due on the transfer to the third party. The court holds that this gift was intended to take effect in possession or enjoyment after the death of the grantor, as the beneficiary could have no possession or enjoyment of the principal until after his death; and the fact that she had possession and enjoyment of the income in his lifetime makes no difference. The income and principal stood each by itself and were as independent of each other as if the income had been given to a third person. The property is subject to a tax to be assessed as of a time thirty days after the expiration of the five years referred to in the agreement and interest is to be paid upon the tax from that time. *New England Trust Co. v. Abbot*, 205 Mass. 279, 91 N. E. 379.

<sup>4</sup>The decedent in 1893 transferred to his four daughters eleven shares of stock in a certain company, and the daughters on the same day delivered to him an instrument reciting that he had transferred the stock on condition that he is to receive all dividends during his life, and also on condition that he has the right to vote upon the stock as though no transfer had been made. The agreement further provided that it was not revocable, but to continue in full force until the death of the decedent. The court holds that the two instruments being executed at the same time must be construed together as a single instrument; that the effect of these was to transfer to the daughters the remainder in stock after the

donor's death, reserving to the latter an estate for his life. The court, relying on *In re Green*, 153 N. Y. 223, holds that this is a gift of remainder after the death of the donor and is taxable as a transfer "intended to take effect in possession or enjoyment at or after such death." *In re Brandeth*, 169 N. Y. 437, 62 N. E. 563, 58 L. R. A. 148, reversing 58 N. Y. App. Div. 575, 69 N. Y. Suppl. 142.

### **Sec. 101. Deed Dependent on Will.**

Where the settlor in a voluntary trust deed reserves the right to limit in his will the terms upon which the beneficiaries might enjoy his bounty, and he does make a will, then devolution of the property takes place under the will.

*In re Douglass County*, 84 Neb. 506, 121 N. W. 593.

### **Sec. 102. Trust Deed.**

There is no tax where property is placed outright in trust for another not dependent on death, but a deed in trust will create taxable interests under the circumstances indicated in the following sections.

Where a trust deed was executed, dated December 1, 1892, directing the trustees to pay the net income to the guardian of a certain grandson until his majority on December 3, 1895, when the principal shall be paid to him, this was not subject to the inheritance tax. *In re Masury*, 159 N. Y. 532, 53 N. E. 1127, affirming 28 N. Y. App. Div. 580.

### **Sec. 103. Trust Imposed by Extrinsic Evidence.**

Where a legatee took a legacy impressed with a trust imposed by facts extrinsic to the will, for purposes exempt from taxation, the legacy is still taxable, as the legatee takes under the will the legal title and the equitable rights did not accrue under the will but from extrinsic evidence alone.

*In re Edson*, 159 N. Y. 568, 54 N. E. 1092, affirming 38 N. Y. App. Div. 19, 56 N. Y. Suppl. 409.

### **Sec. 104. Sale.**

The meaning of the word "sale" as used in the Ohio statute includes only transactions which, though in form sales, are in fact gifts. Since the act is within the legislative power granted and not within the letter or spirit of any limitation, it is valid.

*Hagerty v. State*, 55 Ohio St. 613, 626, 45 N. E. 1046, affirming 12 C. C. R. 606.

### Sec. 105. Joint Deposit.

Where the husband and wife deposited money in a savings bank in their joint names, with account payable to either or survivor, the wife has an interest in the deposit to give her an equal right with him to withdraw it during their joint lives and vests her with the absolute title in case she survives him. The court holds that in this case it was not the intention of either party to divest himself of the control and use of this money so long as both lived, and that the accounts were entered so that either could draw money during their joint lives as a matter of convenience, and upon the death of either the deposits would become the absolute property of the survivor. The court holds that the husband did not surrender the absolute possession and dominion of the money in question during his lifetime, and that, although there was no intention on the part of the parties to evade the transfer tax law, yet as the transfer had not become absolute until the death of the depositor such parts of the different deposits as were not the money of the wife when deposited are taxable.<sup>1</sup>

A joint deposit in a savings bank made up of sums which were given by the decedent to his wife is not taxable.<sup>2</sup>

<sup>1</sup> *In re Kline*, 65 Misc. 446, 121 N. Y. Suppl. 1090.

*Contra.* The act of depositing money in the joint names of the husband and wife indicates an intent to invest the title of the money in the survivor, and the deposit being joint is in the nature of an agreement or contract between the husband and wife, is not testamentary nor does it depend upon the intestacy or testacy of the decedent. In this case there is no suggestion that the joint deposit was made with intent to evade the transfer tax. The survivorship is a mere incident. *In re Stebbins*, 52 Misc. 438, 103 N. Y. Suppl. 563. *In re Graves*, 52 Misc. 433, 103 N. Y. Suppl. 571. See *National Safe Deposit Co. v. Stead*, 250 Ill. 584, 95 N. E. 973, upholding law forbidding safety deposit companies from delivering contents of box leased jointly on death of a lessee except on ten day's notice to state officials. See also *In re Wilkins' Estate*, 129 N. Y. S. 600.

An irrevocable trust in the guise of a joint deposit was found in *In re Pierce*, 132 N. Y. App. Div. 465, 116 N. Y. Suppl. 816, reversing 60 Misc. 25, 112 N. Y. Suppl. 594.

<sup>2</sup> *In re Rosenberg*, 114 N. Y. Suppl. 726. See *post*, s. 158.

### Sec. 106. Compromise of Interests under Will.

The question whether sums paid in compromise of litigation are subject to tax may depend on the wording of the taxing statute and usually resolves itself into a question whether the property passes under the will or on death, or by virtue of the agreement. There seems to be some confusion in the cases and considerable

difference of opinion has developed, ranging from the Massachusetts view that agreements among the parties cannot be considered as affecting interests under the tax, to the Pennsylvania doctrine that the man who actually receives the property should pay the tax. The Massachusetts court in its most recent decision has expressly refused to follow the Pennsylvania view.<sup>1</sup> It would seem that the Massachusetts doctrine is preferable both on principle and as a practical matter of policy. The other view is an open inducement to unscrupulous persons to make such collusive arrangement as may save their pocketbooks at the expense of their conscience.

Payments made in good faith to heirs in settlement of contests over the validity of a will should be included in reckoning the inheritance tax,<sup>2</sup> even though the will is disallowed by agreement, and the balance, after paying certain sums to the legatees, is given to the contestants,<sup>3</sup> although such sums may not be taxed on the ground that they are not interests under the will within the language of the act.<sup>4</sup> So payments in adjustment of conflicting claims to an estate under different wills are subject to tax.<sup>5</sup>

A testator made two wills and the heirs of the sole legatee in the first will contested the second will, but compromised under an agreement by which the will was to be probated and the estate was to pass under the last will in default of a contest. In so passing it became subject to the inheritance tax and moneys paid out by those receiving it, whether in litigating the contest or in buying their peace, ought not to be deducted from the estate in ascertaining the value of the property subject to such tax.<sup>6</sup> The court holds that payments in adjustment of conflicting claims to an estate by those asserting title thereto cannot be construed as debts nor treated as expenses in its settlement. The entire estate including the sums to be paid the contestant passed to the legatees of the deceased upon his death, and payments in settlement are in law by the legatees rather than an expense of the estate. The court relies on *In re Westurn*, 152 N. Y. 93, 46 N. E. 315. The court distinguishes the case of *In re Hawley*, 214 Pa. St. 525, as in that case the daughters who took the property under the will and paid over in compromise were direct descendants and therefore no tax was due, while in this case the estate was acquired by the heirs as they were collateral, was subject to the tax, and in paying it out they were handling their own property. The court also distinguishes *In re Kerr*, 159 Pa. St. 512, 28 A. 354, as there the compromise was of a contest over the testator's title.<sup>7</sup>

The testator had made two wills and the second will was contested and, under an agreement of compromise executed by the parties, it was agreed that contestants were to "pay C. the legacy given her under said [second] will." The court was evenly divided on the question whether this payment was subject to the inheritance tax. If the payment was made under the will it was subject to the tax, and if the payment went under the agreement it was not.<sup>8</sup>

But where the legatees who are all collateral relatives of the testator made a compromise with a son whereby they paid him a certain sum in settlement, and in consideration thereof he withdrew his contest and the will was admitted to probate, the collateral legatees are not liable to pay the collateral inheritance tax on money paid to the son. The reason is that the amount paid the son "was never received by them as legatees, and under the act it is only so much of the estate which actually passes to them by virtue of the will that is liable to the tax."<sup>9</sup>

A contest over the will was compromised by an agreement. The contest against the will was withdrawn and the jury thereupon found in favor of the will. The contest was made by the collateral heirs and the compromise provided that the widow who was the sole devisee should deed one-half of the property devised to the collateral heirs, and this was done. The court holds that the collateral heirs do not derive their title under the will but from the deed of the widow; that they therefore do not take by inheritance, will, deed, grant, gift or otherwise from the testator, and hence, under the provisions of the Tennessee statute, no inheritance or succession tax attaches to the property in transfer.

The counsel suggested that by fraud and collusion the state might be entirely defeated of its tax, but the court replies that there is no semblance of proof in the record that this compromise was not made in the utmost good faith and not as a mere subterfuge to evade the payment of the tax.<sup>10</sup> On the other hand the opposite result has been reached in Colorado.<sup>11</sup>

It may be that money paid to one who under no theory could take, whether the decedent died testate or intestate, should not be subject to tax.<sup>12</sup>

Money paid in compromise of a claim against the testator's title<sup>13</sup> or to settle claims of creditors named as legatees, however, should not be taxed, as it forms no part of the estate of the decedent.<sup>14</sup> A compromise may create interests to take effect in the future



such that they may be subject to tax, although the statute came into existence after the death of the original testator.<sup>15</sup> A statutory agreement of compromise of a will is not in Massachusetts a "will" within the terms of the inheritance act.<sup>16</sup>

<sup>1</sup> *Baxter v. Stevens*, 209 Mass. 459, 95 N. E., 854.

<sup>2</sup> *In re Mark*, 40 Misc. 507, 82 N. Y. Suppl. 803, such payments cannot be deducted as expenses of administration. See *Matter of Demers*, 84 N. Y. S. 1109, 41 Misc. 470.

<sup>3</sup> *In re Rubincam* (1881), 14 Phila. (Pa.) 306. The court suggests that if an absolute sum had been fixed as the price of the consent of the contestant to the compromise, which she might perhaps claim as a debt from the other parties in interest, she could not have been charged with a tax. Cf. *In re Hawley*, 214 Pa. St. 525, 63 A. 1021, noted *post*, n. 14.

<sup>4</sup> *Page v. Rives*, Fed. Cas. 10,666, 1 Hughes 297, where the statute taxed "a distributive share in an intestate's estate" and "a legacy."

<sup>5</sup> Where a son contested a will of his father, and to settle his contest he was paid a sum in excess of the legacy provided by the will, this sum is subject to taxation. The money was paid to him by virtue of his heirship because he was the son of the decedent. *People v. Rice*, 40 Colo. 508, 91 P. 33.

<sup>6</sup> *In re Wells*, 142 Iowa 255, 120 N. W. 713.

<sup>7</sup> *In re Wells*, 142 Iowa 255, 120 N. W. 713. *In re Pepper's Est.*, 159 Pa. St. 908, 28 A. 353. *In re Stone's Est.*, 132 Iowa 136. *In re Cook's Est.*, 187 N. Y. 253, 79 N. E. 991.

<sup>8</sup> *In re Wells*, 142 Iowa 255, 120 N. W. 713.

<sup>9</sup> *In re Pepper*, 159 Pa. St. 508, 28 A. 353, 4 Pa. Dist. R. 101.

<sup>10</sup> *English v. Crenshaw*, 120 Tenn. 531, 110 S. W. 210. The court relies upon *In re Kerr*, 109 Pa. St. 512, 28 A. 354, and upon *In re Hawley*, 214 Pa. St. 525, 63 A. 1021, construing a Pennsylvania statute almost identical with that in Tennessee.

<sup>11</sup> The testator died in 1869 leaving a will devising property to a certain school, and if the legislature should pass any act which will defeat the carrying out of this legacy, then he bequeathed the fund to his illegitimate children. The illegitimate children claimed that the clause creating the fund was illegal under Virginia statutes and that they were therefore entitled, and a settlement was made with them for three hundred thousand dollars. The court holds that the estate taken by the illegitimate children was an executory devise and was void for remoteness; that as they were not entitled to any legacy, the three hundred thousand dollars paid them was not paid as a legacy and was not liable to taxation; that it was not paid as a distributive share, as, being illegitimate children, they would be entitled to no interest in the estate if he died intestate. *Page v. Rives*, Fed. Cas. 10, 666, 1 Hughes 297.

<sup>12</sup> *People v. Rice*, 40 Colo. 508, 91 P. 33.

<sup>13</sup> The allowance or compromise of the claims of third persons simply reduces the estate afterwards passing to volunteers with the same effect as if the reduction had been caused by the payment of debts, or as if the payment or surrender had been the result of a suit terminating in favor of the claimant. *In re Kerr*, 159 Pa. St. 512, 513, 28 A. 354, 2 Pa. Dist. R. 535.

<sup>14</sup> Where legatees claim that the writing was a valid will and the provision for their benefit was in discharge of an obligation and the heirs denied the validity

of the writing as a will, because of the want of testamentary capacity, and a settlement was made in which the employees were treated as creditors and allowed a part of their demands, this was clearly a compromise of a doubtful right to avoid litigation, by which the heirs parted with a portion of the estate for the purchase of peace. The employees took nothing under the will and the money paid them was not subject to tax unless the whole arrangement was collusive. The claim of the commonwealth was not affected by the fact that the annuities provided for the sisters of the decedent were secured to them without abatement. The contest was as to the whole writing and not as to a part. If it was invalid their claims as annuitants fail with the others. The will was refused probate and the money paid to the legatees was not subject to the collateral tax. So payment made to other legatees who had no demand against the estate were also relieved from the tax. *In re Hawley*, 214 Pa. St. 525, 63 A. 1021.

<sup>15</sup> The testator died before 1892 and the Iowa inheritance law went into effect in 1896. In 1892 the devisee of certain land entered into an agreement with the collateral heirs by which the devisee was to have the use of the land for his life and on his death that it should go over to the collateral heirs, this agreement being made in consideration the collateral heirs would not contest the will. The devisee died in 1906 and the court holds that the interest acquired by the collateral heirs is subject to the tax, as the statute is very clear and applies to all cases where wills, grants, deeds, etc., are made or intended to take effect in possession or enjoyment after the death of the grantor or donor. Here even if the title passed either mediately or immediately from testator, it did not take effect either in possession or enjoyment until after the death of the devisee, the estate of the testator was subject to the control of the district court in virtue of the contract for a long time after the collateral inheritance law went into effect, and by reason of that fact the land was subject to the tax. The collateral heirs by making a contract with the devisee surrendered their right to take immediate possession and enjoyment of the property and if they now have title through the testator they by their own acts delayed the determination of their rights until after the collateral inheritance tax law went into effect. Whether the collateral heirs took under the will of the testator or not it is very clear that the property did not pass by will, deed, grant, etc., to take effect in possession or enjoyment immediately. Possession and enjoyment were clearly postponed until the death of the devisee. The payment of a tax can only be defeated by such a bona fide conveyance as parts absolutely with the title, possession and enjoyment during the grantor's lifetime.

The majority of the court finds, however, that the land which was not devised directly to the devisee but which was covered by contract is not subject to the tax, for the reason that it vested immediately upon the death of the testator in the collateral heirs and cannot be made subject to a tax created by a subsequent act of the legislature.

Deemer, J., who writes the majority opinion, dissents from this last conclusion, believing that by the contract the vesting in possession and enjoyment was postponed until the death of the devisee and that until that event it was uncertain who might take. *Lacey v. State Treasurer*, (Iowa, 1909,) 121 N. W. 179 (McClain J., dissenting).

<sup>16</sup> *Baxter v. Stevens*, 209 Mass. 459, 95 N. E. 854.

The court cites and relies on *In re Graves*, 242 Ill. 212, *In re Wells*, 142 Iowa 255, *In re Cook*, 187 N. Y. 253, and declines to follow *In re Pepper*, 159 Pa. St. 508, *In re Kerr*, 159 Pa. St. 512.

Where there is a contest over a will, and under the Massachusetts statute the contest is settled by a compromise agreement for distribution, and the will is never probated, the compromise is for the purpose of the inheritance tax, the will under which the property passed. *McCoy v. Gill*, 156 Fed. 985.

### Sec. 107. Interest in Insurance or Beneficial Society.

Rights under beneficiary societies are not subject to tax and are not considered as a conspiracy to evade the collateral inheritance law, although the payments are dependent on death.<sup>1</sup> In a New York case the testator was a member of the New York produce exchange, and was a subscriber to the gratuity fund of that body, which under its by-laws belonged to beneficiaries provided for on his death and was not liable to the payment of debts or legacies. This money passed, not by virtue of will or of any administration, but by the contract of the testator with the produce exchange.

The distinction between the two classes of policies, — the first class where the contract is made for the benefit of the insured and the proceeds pass to his personal representatives as part of his estate, and the second class where the contract was made for the benefit of others and the proceeds are transferred to them by the terms of the contract, — was clearly laid down by the court.<sup>2</sup>

So a life insurance policy assigned to the wife of the decedent,<sup>3</sup> or payable to the wife and assigned by her in trust, is not subject to tax.<sup>4</sup>

A life insurance policy on the life of the decedent held by him at the time of his death is property owned by him at his death and so under that act subject to appraisal for the purposes of taxation under the New York inheritance law. The argument was made that it was only property liable to taxation under the general tax law of the state which could be taxed under the act relating to taxable transfers, and that inasmuch as life insurance policies cannot be included in the valuation of the taxpayer's property under the general law, they cannot be considered in assessing the tax under the collateral inheritance law. But the taxable transfer law has no reference or relation to the general law. While the object of both is to raise revenue for the support of the government, they have nothing else in common.<sup>5</sup>

Where a tax was levied on the right under an insurance contract to certain commissions on renewal premiums, the claim was made

that the inheritance tax could not be exacted because the value of the inheritance was too uncertain, as the policies on renewal might be suffered to lapse and hence that the premiums might never be collected. The court holds that the certainty or uncertainty of policies being renewed is a matter pertaining to the insurance business, and that the actuary of the company can no doubt make an estimate sufficiently close for all practical purposes of the actual or present value of this claim against the company.<sup>6</sup>

<sup>1</sup> *In re Vogel*, 1 Pa. Co. Ct. 352, 18 Wkly. Notes Cas. 242.

<sup>2</sup> *In re Fay*, 25 Misc. Rep. 468, 55 N. Y. Suppl. 749.

<sup>3</sup> Where two policies upon their face were payable to the estate of the decedent, and at his death were found in his safe deposit vault, and attached to each policy was an assignment of it in consideration of love and affection to his wife, the comptroller contends that under section 220 the tax is payable upon the transfer of those policies, upon the theory that the transfer was first by death and second by an assignment to take effect in possession or enjoyment at the death of the decedent. The court holds that as against the state the deceased was not possessed of the policies at the time of his death and that the widow did not obtain title to them through his will or by the laws of the state of New York. This is an absolute present assignment of the interests of the assignor in the policy, therefore no transfer tax is assessable. *In re Parsons*, 117 N. Y. App. Div. 321, 102 N. Y. Suppl. 168, affirming 51 Misc. 370, 101 N. Y. Suppl. 430.

<sup>4</sup> Where a life insurance policy was made payable to the wife of the decedent and she joined with him in conveying it to a trust company in trust in contemplation of death, though without giving up her rights in it, therefore this property remained the property of the wife, and was not a part of the estate of the decedent, and therefore was not subject to the inheritance tax. *State v. Bullen*, 143 Wis. 512, 523, 128 N. W. 109.

<sup>5</sup> *In re Knoedler*, 140 N. Y. 377, 35 N. E. 601, affirming 68 Hun 150.

<sup>6</sup> *Succession of Fell*, 119 La. Ann. 1037, 448, 879.

[See further, *post*, s. 218.]

## Sec. 108. Curtesy or Dower, Statutory Rights of Surviving Spouse.

Probably in most states dower or curtesy rights do not fall within the class of interests under the intestate laws subject to tax,<sup>1</sup> although when dower is released and the property so released passes to taxable beneficiaries, the tax must be imposed on that property.<sup>2</sup>

It is obvious that dower rights when exercised must be deducted in fixing the valuation of other interests given under the will,<sup>3</sup> and no statutory rights can be allowed to things which would be exempt if they did exist when such rights are not allowed by state law unless they actually do exist.<sup>4</sup>

The exemption to the widow of certain articles enumerated under the New York statute renders them not subject to the transfer tax whether the decedent died testate or intestate. This property is not to be included in estimating the value of the estate subject to tax.<sup>5</sup> So the value of a year's support for the widow under the statute is not subject to tax in Tennessee.<sup>6</sup>

One taking a legacy in lieu of dower must pay the tax, as by accepting the legacy she elects to take under the will,<sup>7</sup> but the value of the wife's dower must be deducted from the property where a legacy is given her not expressed to be in lieu of dower.<sup>8</sup> In Illinois, however, the contrary result is reached, as in that state such rights are held to be intestate rights,<sup>9</sup> although taken under an ante-nuptial agreement in lieu of dower,<sup>10</sup> and there the surviving spouse may lose his exemption by claiming curtesy or dower.<sup>11</sup>

<sup>1</sup> *Crenshaw v. Moore* (Tenn. 1911), 137 S. W. 924. *Comm. v. Powell*, 51 Pa. St. 438.

The fact that the widow took less than the law allowed her makes no difference, as she still took her dower rights. The court must look at the true character of the transaction, and in doing so cannot permit it to be submerged in mere form. *Appeal of Commonwealth*, 34 Pa. St. (10 Casey) 204.

The widow's dower became vested as an inchoate estate upon her marriage and consummate upon the death of her husband, independent of the will and not by virtue thereof, and is therefore not subject to the transfer-tax. *In re Weiler*, 122 N. Y. Suppl. 608.

Curtsey was found not taxable in the following cases. This estate is an ancient one arising from the marriage relation and not by inheritance or from the wife's estate and is not an incident to the wife's death and intestacy. *In re Green*, 68 Misc. 1, 124 N. Y. Suppl. 863, 129 N. Y. S. 54. *In re Starbuck*, 137 N. Y. App. Div. 866, 122 N. Y. Suppl. 584, affirming 63 Misc. 156, 116 N. Y. Suppl. 1030.

<sup>2</sup> *In re Small*, 151 Pa. St. 1, 16, 25 A. 23, 30 Wkly. Notes Cas. 521.

<sup>3</sup> "Obviously under sections 1 and 2 of the Inheritance Tax Law as construed by this court in the cases heretofore cited, the legislature intended that a person should be taxed only on the beneficial interest that he receives. The only beneficial interest in the real estate that passed to the daughter in this case from her father's estate was the value of this real estate less the value of the dower interest of the mother. The county court decided rightly in deducting the cash value of said dower when fixing the beneficial interest received by and taxed against the daughter." *Per Carter, J., in People v. Nelms*, 241 Ill. 571, 89 N. E. 683.

The court distinguishes *In re Kingman*, 220 Ill. 563, 77 N. E. 135, as in that case the estate was for years and not for life. *People v. Nelms*, 241 Ill. 571, 89 N. E. 683.

<sup>4</sup> *In re Libolt*, 102 N. Y. App. Div. 29, 92 N. Y. Suppl. 175.

<sup>5</sup> *In re Page*, 39 Misc. Rep. 220, 79 N. Y. Suppl. 382. *In re Stuyvesant's Estate*, 72 Misc. 295, 13 N. Y. S. 197.

<sup>6</sup> *Crenshaw v. Moore*, (Tenn. 1911,) 137 S. W. 24.

<sup>7</sup> *In re Riemann*, 42 Misc. Rep. 648, 87 N. Y. Suppl. 731. *In re De Graaf*, 24 Misc. Rep. 147, 53 N. Y. Suppl. 591, 2 Gibbons 516.

<sup>8</sup> Under the law the widow is not put to her election as between dower and the provision by the will; and therefore the value of the wife's dower, since it is not taxable, should be deducted from the gross value of the lands devised to others for the purposes of the inheritance tax. *In re Shields*, 68 Misc. 264, 124 N. Y. Suppl. 1003. But where the widow fails to elect she is presumed to have elected to take under the will. *In re Stuyvesant's Estate*, 72 Misc. 295, 131 N. Y. S. 197.

<sup>9</sup> *People v. Field*, 248 Ill. 147, 93 N. E. 721, *Billings v. People*, 189 Ill. 472, 59 N. E. 798, 59 L. R. A. 507.

Under the Illinois statute of 1895, page 303, section 1, "intestate laws" include the widow's dower. It was contended that dower is of great antiquity and was not created by statute but by the common law; but the court holds that the institution of dower is subject to full legislative control and may be changed or modified at any time. The court holds that the "intestate laws" referred to are those laws of the state which cover the devolution of estates and of persons dying intestate and include all applicable rules of the common law in force in this state and they regulate and control the interest which the widow took in her husband's property at his death. *Billings v. People*, 189 Ill. 472, 477, 59 L. R. A. 807.

<sup>10</sup> Where the testator signed an ante-nuptial agreement by which the wife took a certain sum in lieu of her dower rights on his death, the court holds that this sum taken under the agreement is not exempt from the inheritance tax. It being in lieu of dower it is subject to tax as dower is. The amount received should not be deducted in estimating the market value of the estate. *People v. Field*, 248 Ill. 147, 93 N. E. 721, referring to *Billings v. People*, 189 Ill. 472.

<sup>11</sup> Ill. St. 1895, s. 2, exempting the life estate in any property devised or bequeathed to the wife of the testator, does not apply when the wife renounces the will and elects to take her statutory rights. *Connell v. Crosby*, 210 Ill. 380, 393, 71 N. E. 350.

## Sec. 109. Rights in Community Property.

The inheritance tax on community property depends on whether the survivor takes by inheritance or by virtue of the marriage relation. The tax is levied in California<sup>1</sup> and not in Louisiana.<sup>2</sup>

It was claimed in one case that the surviving wife's share of the property was acquired under the California constitution of 1849, and that therefore the wife acquired a vested right in the community property, which was protected by the federal constitution. The court finds, however, that the declaration in the constitution of 1849, that "laws shall be passed more clearly defining the rights of a wife in relation as well to her separate property as to that held in common with her husband," amounts to no more than a mandate to the legislature to define and prescribe the rights of the wife in the property of the community. It was the design of the constitution of 1849 to preserve so far as might be the rights to the community property which wives had enjoyed. But even under

the Spanish law the wife had no vested estate in the community property, but it was a mere expectancy so long as the community exists. The court finds, therefore, that the California inheritance tax law is not in violation of the federal constitution, on the ground that it takes away a vested interest.<sup>3</sup>

<sup>1</sup> The inheritance tax statute was passed presumably in view of the California decisions that the wife took her share of the community property upon the death of her husband by succession as his heir. *In re Moffitt's Estate*, 153 Cal. 359, 95 P. 653. *In re Sim's Estate*, 153 Cal. 365, 95 P. 655. *People v. Lebus*, Cal. 1908, 96 P. 1118.

<sup>2</sup> *Succession of Marsal*, 118 La. Ann. 212, 42 S. 778 (usufruct in community property is taken under marriage contract and not by inheritance). See *Succession of Baker*, (La. 1911,) 55 So. 714.

<sup>3</sup> *In re Moffitt*, 153 Cal. 359, 95 P. 1025, affirming on rehearing 95 P. 653, deciding the question as to the federal constitution, which was not considered in the original opinion.

## Sec. 110. Homestead.

Property set apart by the court as homestead in California is not subject to tax,<sup>1</sup> although the wife to whom the homestead is set apart is also a devisee and legatee.<sup>2</sup>

<sup>1</sup> The California statute of 1905, c. 314, section 1, provides that all property which shall pass by will or by the intestate laws shall be subject to the inheritance tax. It was claimed that this language included property set apart to the widow as a homestead. The court finds, however, that where the power of setting apart as a homestead is exercised by the probate court, the devisee and legatees take no beneficial interest whatever. The probate court may even set apart as a homestead real property specifically devised by a will and thus defeat the devise. Where it is so set apart as a homestead the title of the person to whom it is so set apart is in no way derived by will, but comes solely from the homestead order. It is clear, therefore, that what the widow takes under this order of the probate court she does not take by will or by the intestate laws of the state. The language, "pass by will or by the intestate laws of this state," means to pass by virtue and force of the law of this state governing testate or intestate succession.

It was further claimed that the property of the testator passed to the devisees and that subsequently by an order of the probate court the homestead was carved out of it. The court says that the right to any tax imposed vested in the state at the moment of death and could not be legally divested by any department of the state, but that the right so vested to the tax imposed by the act; and when it is determined that the act imposed no tax as to property lawfully diverted by the court in probate with the consequence that it could never be distributed to the devisee, legatee or heir, it is apparent that no vested right to the state is impaired. Therefore, the inheritance tax cannot be assessed on such property. *In re Kennedy*, 157 Cal. 517, 108 P. 280.

<sup>2</sup> *In re Kennedy*, 157 Cal. 517, 108 P. 280.

## CHAPTER XIX.

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### TRANSFERS IN CONTEMPLATION OF DEATH.

- § 111. Definition.
- § 112. Intent to Evade Tax.
- § 113. Deed Made before Valid Statute Enacted.
- § 114. A Question of Fact.
- § 115. Burden on Heirs to Show Good Faith.
- § 116. Heirs of Grantee not Bound by his Statements.
- § 117. Will Contemporaneous with Deed.
- § 118. Illness or Impending Death.
- § 119. Life Estate Reserved to Grantor.
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- § 121. Grantor Retaining no Control.
- § 122. Power of Revocation.
- § 123. Where Decedent Transfers Property to Corporation and Retains Life Interest in its Stock.
- § 124. Conveyance for Consideration where Possession is Postponed till the Death of the Grantor.
- § 125. Where Property Burdensome to Grantor.
- § 126. Purpose to Reduce Estate to Affect Widow's Election as to Dower.
- § 127. When Deed never Delivered.
- § 128. Where Deed never Recorded.
- § 129. Deed Executed before Statute Enacted.
- § 130. Liability of Executors.

#### Sec. 111. Definition.

The words "in contemplation of death" commonly used in the inheritance statutes do not refer merely to that general expectation of death which every mortal entertains,<sup>1</sup> but to impending approaching decease.<sup>2</sup> The language is not confined to gifts *causa mortis*,<sup>3</sup> and it has been said to be limited only to cases of evasion.<sup>4</sup> The contemplation of death must be the impelling motive, without which the conveyance would not be made, in order to subject a transfer of property to the inheritance tax.<sup>5</sup>

<sup>1</sup> The words "in contemplation of death" do not refer to that general expectation which every mortal entertains, but rather the apprehension which arises from some existing condition of body or some impending peril. *In re Baker*, 178 N. Y. 575, 70 N. E. 1094, affirming 83 N. Y. App. Div. 530, 38 Miss. 151, 77 N. Y. Suppl. 170.



\* "A gift is made in contemplation of an event when it is made in the expectation of that event and having it in view, and the gift when the donor is looking forward to his death as impending and in view of that event, is within the language of the statute." *Per* Cartwright, J., in *Rosenthal v. People*, 211 Ill. 306, 71 N. E. 1121.

"The meaning of the words 'in contemplation of death,' as used in the statute, must be inferred and ascertained from the context of the act and the object sought to be accomplished by the law. It is manifest that they were intended to cover transfers of parties who were prompted to make them by reason of the expectation of death, and which, in view of that event, accomplish transfers of the property of decedents in the nature of a testamentary disposition. It is therefore obvious that they are not used as referring to that expectation of death generally entertained by every person. The words are evidently intended to refer to an expectation of death which arises from such a bodily or mental condition as prompts persons to dispose of their property and bestow it on those whom they regard as entitled to their bounty. This accords with the general objects and purposes of the law, namely, the imposition of a tax on the devolution of property involved in the demise of the owner." . . . *Per* Siebecker, J., in *State v. Pabst*, 139 Wis. 561, 589, 121 N. W. 351.

\* "The claim that the words can include only gifts *causa mortis* attributes to them too restricted a meaning. A transfer valid as a gift *inter vivos*, if made under circumstances which impress it with the distinguishing characteristics of being prompted by an apprehension of impending death, occasioned by a bodily or mental state which has a basis for the apprehension that death is imminent, would be a transfer made in contemplation of death within the meaning of the law." *Per* Siebecker, J., in *State v. Pabst*, 139 Wis. 561, 589, 121 N. W. 351.

<sup>4</sup> *In re Spaulding*, 163 N. Y. 607, 57 N. E. 1124, affirming 49 N. Y. App. Div. 541, 549.

<sup>5</sup> *People v. Burkhalter*, 247 Ill. 600, 93 N. E. 379.

## Sec. 112. Intent to Evade Tax.

The words "in contemplation of death" are intended to cover all transfers made with the intention of evading the death duties,<sup>1</sup> although intent to evade need not necessarily appear.<sup>2</sup>

<sup>1</sup> *In re Thorne*, 162 N. Y. 238, 56 N. E. 625, 44 N. Y. App. Div. 8, 60 N. Y. Suppl. 419. *In re Spaulding*, 163 N. Y. 607, 57 N. E. 1124, affirming 49 N. Y. App. Div. 541, 549. *In re Baker*, 178 N. Y. 575, 70 N. E. 1094, affirming 83 N. Y. App. Div. 530, 38 Wis. 151, 77 N. Y. Suppl. 170. *In re Bullard*, 76 N. Y. App. Div. 207, 78 N. Y. Suppl. 491, affirming 37 Misc. 663, 76 N. Y. Suppl. 309.

Where the decedent made an absolute deed of land and took a bond back from the grantee to pay the income to the grantor for his life, this is a conveyance in contemplation of death within the terms of the Pennsylvania inheritance tax of 1826, especially where it was made during the last sickness of the grantor. "It is true, the obligation of the bond was not inserted as a condition or reservation in the deed; it was in form a mere personal obligation; but this contention does not involve a technical question of title nor of lien; the whole matter depends upon the single fact whether or not the transfer was made or intended to take effect in enjoyment at the death of the grantor. The policy of the law will not

permit the owner of an estate to defeat the plain provisions of the collateral inheritance law, by any devise which secures to him, for life, the income, profits, and enjoyment thereof; it must be by such a conveyance as parts with the possession, the title, and the enjoyment in the grantor's lifetime." *Per* Clark, J., in *Reisk v. Commonwealth*, 106 Pa. St. 521, 526.

\*The tax is due in a case where the grantor suffered from spinal trouble with a malignant growth and became rapidly worse, and where three days after the making of the grant he made his will and died at the end of a month, although no evidence appeared of his intent to defraud the state of his inheritance tax. No such intention needs to appear. The statute includes all gifts made in contemplation of death, and that language does not naturally nor necessarily involve a fraudulent intent. *Rosenthal v. People*, 211 Ill. 306, 71 N. E. 1121.

### Sec. 113. Deed Made before Valid Statute Enacted.

Where a transfer was made while an unconstitutional statute was in force, and later before the death of the transferor the court passed an act which was valid, the court says that it is possible that the parties may have had the possibilities of an inheritance tax in mind, but the law which the state was attempting to apply was not then in force and the case therefore does not present the question of the effect of a transfer of property with the intention and for the purpose of avoiding the operation of an existing inheritance tax law.

*State v. Probate Court, Washington County*, 102 Minn. 268, 286, 113 N. W. 888. Whether tax retroactive as to gifts *inter vivos*, see *ante*, s. 84.

### Sec. 114. A Question of Fact.

The question whether a deed is made in contemplation of death is a question of fact on which the finding of the trial court is final.

*People v. Kelley*, 218 Ill. 509, 75 N. E. 1038. *In re Bullard*, 76 N. Y. App. Div. 207, 78 N. Y. Suppl. 491, affirming 37 Misc. 663, 76 N. Y. Suppl. 309. *In re Thorne*, 162 N. Y. 238, 56 N. E. 625, 44 N. Y. App. Div. 8, 60 N. Y. Suppl. 419.

### Sec. 115. Burden on Heirs to Show Good Faith.

The heirs of the grantor are usually the only persons who can show the nature of the conveyance, and a lack of evidence on this question shows a lack of good faith.

*In re Palmer*, 17 N. Y. App. Div. 360, 102 N. Y. Suppl. 236.

### Sec. 116. Heirs of Grantee not Bound by His Statements.

The heirs of the grantee are not bound by his statements as to the interest of the grantor.

The testator died in 1893 giving his nephew a life interest in certain property and providing that in default of a will the remainder of the estate should pass to the heirs of the nephew. At the appraisal of the estate of the testator the nephew stated that the testator at the time of his death was the owner of certain real estate although the fact was that the testator had previously executed and delivered to the nephew a deed of the property. The court holds that the heirs of the nephew are not bound by his acts but have a right to rely upon the deed rather than upon the will, and that therefore they cannot be assessed for an inheritance tax for the transfer of this real estate. *In re Mather*, 179 N. Y. 526, 71 N. E. 1134, affirming 90 N. Y. App. Div. 382, 85 N. Y. Suppl. 657, 84 N. Y. Suppl. 1106, 41 Misc. 414.

### **Sec. 117. Will Contemporaneous with Deed.**

The fact that the grantor makes his will within a short time of,<sup>1</sup> or simultaneously with making the deed in question,<sup>2</sup> is significant that it was made in contemplation of death.

<sup>1</sup> *Rosenihal v. People*, 211 Ill. 306, 71 N. E. 1121.

<sup>2</sup> *State v. Pabst*, 139 Wis. 561, 593, 121 N. W. 351. See, however, *In re Mahlstedt*, 67 N. Y. App. Div. 176, 73 N. Y. Suppl. 818.

### **Sec. 118. Illness or Impending Death.**

The fact that a conveyance is made by a decedent while ill, and shortly before his death, is a strong circumstance showing that it was made in contemplation of death.<sup>1</sup>

On the question whether a deed was made in contemplation of death, evidence was introduced as to the cause of his death,—diabetes. The decedent's declaration three years before his death, that in recognition of the valuable aid of his sons in building up his estate he intended to dispose of part of his estate to them, was put in as evidence. But the court remarks that it is significant that he did not do so then or in the immediately succeeding years. The court remarks that considering his condition, the execution of the deed of gift and the will simultaneously indicates that he was disposing of his property to those whom he regarded as natural objects of his bounty rather than that he was transferring it to them as compensation for worthy and valuable service rendered by them. He knew his condition and was aware of the outcome to be inferred from his symptoms. The deed of gift was made about six months before his death and the court finds that the evidence abundantly sustains the conclusion of the trial court that the deed of gift was made in contemplation of death.

The death certificate of the decedent's attending physician was proper evidence under Wisconsin statutes, where it was intro-

duced as evidence of its contents on the issue of whether the deed made was made in contemplation of death.<sup>2</sup>

<sup>1</sup> *In re Palmer*, 17 N. Y. App. Div. 360, 102 N. Y. Suppl. 236. *Reish v. Commonwealth*, 106 Pa. St. 521, 528.

Where a woman seventy-nine years old was afflicted with consumption from which she knew she could not recover and was very weak, and made a transfer of property eight days before her death, the court finds that this was made in contemplation of death under the New York statute. *In re Birdsall*, 22 Misc. Rep. 180, 49 N. Y. Suppl. 450, 2 Gibbons 293.

Where the decedent was suffering from a chronic disease and ten days before his death he sends for his attorney, telling him that he desired to make such a disposition of his property as would save his son the nuisance of a will contest, and executes deeds by which he conveys all his real estate to his adopted son, this transfer is subject to the inheritance tax. *In re Price*, 62 Misc. 149, 116 N. Y. Suppl. 283. In this case the grantor suffered from spinal trouble, with a malignant growth, and made his will three days after the deed and died at the end of a month, and a tax was levied. *Rosenthal v. People*, 211 Ill. 306, 71 N. E. 1121.

<sup>2</sup> *State v. Pabst*, 139 Wis. 561, 591, 121 N. W. 351.

## Sec. 119. Life Estate Reserved to Grantor.

A deed reserving a life estate in the grantor is commonly subject to tax on the death of the grantor.<sup>1</sup> The decedent in 1896 transferred a large amount of property to one Crispell on an oral agreement that principal and income should belong to Crispell, and that he could dispose of it at any time he chose, but that the decedent was to have the income as long as he lived, although the gift was to be absolute to Crispell. In 1897 the decedent made another gift to Crispell on a written agreement that the decedent was to have for life such part of the net income as he might wish, with power to the decedent to give his sister ten thousand dollars out of the security transferred. The court holds that under these agreements the testator reserved a life interest to himself; that although possession of the securities was given to the donee, this did not make him their absolute owner, and the donee during the donor's life held the securities in trust to pay the income to the donor. The gift is therefore taxable under the transfer act of 1896 as a transfer to take effect after the death of the donor.<sup>2</sup>

Where one makes a deed in trust for the sole benefit of the *cestuis* but reserves unto himself a certain income for life, the court may divide the property and levy an inheritance tax on that portion of it necessary to raise the income stipulated.<sup>3</sup>

Where a grantor by a trust deed conveys property to trustees in trust to pay an annuity to his daughter for life, and the balance

of the income to the grantor, and on his death to pay over the principal as provided in the trust deed, this transfer to the remaindermen on his death is intended to "take effect in possession or enjoyment at or after the death" of the donor, and was therefore subject to the inheritance tax under N. Y. St. 1892, c. 399, s. 1, the trust deed being dated in September, 1892, and the testator dying in 1898.<sup>4</sup>

<sup>1</sup> *In re Ogsbury*, 71 N. Y. App. Div. 71, 39 N. Y. Suppl. 978. *Appeal of Wright*, 38 Pa. St. (2 Wright) 507. *Reish v. Commonwealth*, 106 Pa. St. 521, 526.

<sup>2</sup> *In re Cornell*, 170 N. Y. 423, 63 N. E. 445, modifying 66 N. Y. App. Div. 162, 73 N. Y. Suppl. 32.

<sup>3</sup> *People v. Kelley*, 218 Ill. 509, 75 N. E. 1038, following *People v. Moir*, 207 Ill. 180, 69 N. E. 905, 99 Am. St. Rep. 205.

<sup>4</sup> *In re Cruger*, 166 N. Y. 602, 59 N. E. 1121, affirming 54 N. Y. App. Div. 405, 66 N. Y. Suppl. 636. See, however, *United States v. Leverich*, 9 Fed. 586, holding that *cestui* did not "die possessed of" property.

## Sec. 120. Grantor Retaining Control.

The fact that the grantor retains control of the property is a very strong circumstance to show that the transaction is subject to tax.<sup>1</sup>

In one case a grantor gave a trust transferring property described in trust for his three sisters, reserving to himself certain powers; namely, to direct the payment of the income to himself for life, or to such other persons as he may designate in writing, to withdraw the securities and secure others, to alter or amend the trust and add property thereto and terminate the same at any time by a written notice to a trustee.

The court holds that the donor has reserved during his life such numerous and extensive powers over the property transferred as to preclude the legitimate inference of an intention on his part that they were to take effect in absolute possession or enjoyment before his death. If a person intends in good faith to make an absolute gift of his property during his life to others and thereby make a provision for them which shall not be contingent upon the event of his death, there is no prohibition in the act in that respect. But in this case the trust deed did not constitute an absolute gift of the grantor's property during his life.<sup>2</sup>

<sup>1</sup> *In re Ogsbury*, 7 N. Y. App. Div. 71, 39 N. Y. Suppl. 978. (Where income for use of grantor for life, and on his death as he may by will appoint.)

Where the decedent deposited money in savings banks in trust for his children, these interests are identical with those passing by a will. The decedent reserved

to himself all of the rights of ownership in the interests until his death, when he is presumed to have intended that each trust shall come to an end and that the funds shall revert to his estate if the beneficiaries do not survive him. *In re Barbey*, 114 N. Y. Suppl. 725.

Where the decedent made deeds of his farms and the deeds remained unrecorded and in the possession of the grantor until his death; that the insurance continued to be payable to the grantor and he made contracts with the tenants; that the son continued to reside on the home farm and work it; that the farms continued to be assessed to the grantor who paid the taxes; that the crops were mostly marketed at the grantor's warehouse, and the accounts kept in his books, practically as though he owned them; that all settlements with the tenants were made by the grantor, is evidence sufficient to show that the transfer is within the statute as intended to take effect only on death. *In re Jones*, 65 Misc. 121, 120 N. Y. Suppl. 862.

The fact that the *cestui's* rights depend on his surviving the testator shows that the transfer is in contemplation of death. *In re Patterson's Estate*, 130 N. Y. S. 970, affirming 127 N. Y. S. 284.

<sup>2</sup> *In re Bostwick*, 160 N. Y. 489, 55 N. E. 208, affirming 38 N. Y. App. Div. 223, 56 N. Y. Suppl. 495.

## Sec. 121. Grantor Retaining no Control.

The fact that the grantor reserves no control whatever over the property transferred is a circumstance showing that the gift is made in good faith. So a conveyance did not take effect in contemplation of death where the grantor was not in immediate danger of death at the time the deed was delivered, and the conveyance was made as a provision for the grantor's two sons and the deed was withheld from record by mutual arrangement between the parties but was fully delivered to the trustee and possession of the premises turned over to the trustees at the time of the delivery of the trust deed. It is not the object of the Illinois statute to prevent a parent from giving the whole or any portion of his property to his children in his lifetime if he so desire.<sup>1</sup>

Where an old man, eighty-six years old, physically feeble but mentally active, makes two gifts to his children, of securities of large amounts, stating to them that his property is a burden to him, that he intends to give it to them and shall divide a part of it at the present time, and where the securities are actually delivered and transferred to the donees, and the testator exercises no control over them whatever, these gifts are not gifts in contemplation of death within the meaning of the New York transfer statute.<sup>2</sup>

<sup>1</sup> *People v. Kelley*, 218 Ill. 509, 75 N. E. 1038.

<sup>2</sup> *In re Spaulding*, 163 N. Y. 607, 57 N. E. 1124, affirming 49 N. Y. App. Div. 541.

A case close to the line appeared where the testator, at the age of eighty-three, gave his daughter certificates of stock by transferring his certificates in writing on the back and delivering them to the daughter; but the certificates were never transferred on the books of the company and the testator continued to receive the dividends and act as officer of the company in question. The court finds that though the facts are open to doubt, still no fraud or bad faith appeared to the surrogate and his decision on that matter is therefore final. *In re Bullard*, 76 N. Y. App. Div. 207, 78 N. Y. Suppl. 491, affirming 37 Misc. 663, 76 N. Y. Suppl. 309.

### **Sec. 122. Power of Revocation.**

That the grantor reserves a power of revocation is a sure indication that the deed was in contemplation of death.

*Appeal of Wright*, 38 Pa. St. (2 Wright) 507.

*In re Line*, 155 Pa. St. 378, 393, 26 A. 728, 32 Wkly. Notes Cas. 376.

### **Sec. 123. Where Decedent Transfers Property to Corporation and Retains Life Interest in its Stock.**

A very ingenious Minnesota gentleman organized a corporation and conveyed to it his property in return for the issue to him of most of its capital stock. His wife and children all signed agreements by which the transferror agreed to transfer to the wife and children, certain shares of the stock on their agreement to lease the same stock to the transferror for life, and on the agreement that the wife transfer the stock which she was to receive to the children who were to lease it to her for life on the same conditions. The court holds that the absolute ownership of the stock was not in the original transferror, but that the effect of these transactions was to give him a life estate with an interest in reversion in the wife and children. The court holds that a life estate in personal property, although unknown at common law, may now be created, and that the original transferror reserved no power of disposition of property, and a will made after the transfers assuming to give the stock to other persons would have been of no effect, and that therefore the stock did not pass by inheritance.

*State v. Probate Court, Washington County*, 102 Minn. 268, 292, 113 N. W. 888.

### **Sec. 124. Conveyance for Consideration where Possession is Postponed till the Death of the Grantor.**

In a Pennsylvania case a will devised land to James and John, two brothers, and provided that if James should not build on his land he might sell it to his brother John at two thousand dollars

besides what he was to pay out of it. James sold to John his share for thirty-five hundred dollars and John sold part of this for fifteen hundred dollars. Later, at the request of John, James released all claims under his father's will on condition that John should convey all the land to James's children, they to take possession at John's death and give up an obligation for the two thousand dollars payable after his death. John died unmarried and without issue, and it was held that the share of the land which had belonged to John originally is subject to the tax, but the portion of James is not subject to tax. Substantially it was agreed that the children of James should purchase back that share after John's death by refunding to his estate what he had paid their father for it. Their notes for two thousand dollars have gone into the inventory of the present estate, which is of course to pay the tax. Part of the consideration was that John should convey the entire estate to his nephews and nieces. But it cannot be said that this share was John's at the time of his death, or that it was within the spirit of the proviso in the will. It is not found or pretended that the object was to evade the tax, and the note given for the transfer excludes such a pretension. Had James continued the owner under his father's will, it would have passed to the children on his death and there would have been no claim upon it by the state for the tax on the estate of John.

*Appeal of Waugh*, 78 Pa. St. (28 P. F. Smith) 436.

## Sec. 125. Where Property Burdensome to Grantor.

Gifts have been sustained made by aged persons or those in failing health on the ground that the care of property was a burden to them.

*In re Spaulding*, 163 N. Y. 807, 57 N. E. 1124, affirming 49 N. Y. App. Div. 541. *In re Mahlstedt*, 67 N. Y. App. Div. 176, 73 N. Y. Suppl. 818. *In re Groves*, 52 Misc. 433, 103 N. Y. Suppl. 571.

The testator was the president and the owner of nearly all the stock in a corporation, and it was his duty to sign all corporation notes, drafts, checks and other papers, but this duty becoming burdensome during his illness and he having been told by his physician that when he recovered he would have to take a long vacation, he expressed the desire that he might transfer his stock to his wife, so that she could become a member of the company at once and transact the business in his place. He did this, retaining only one share for himself so that he might continue to be a member of the company and have a right to vote at its meetings.

The court holds that this is not a transfer in contemplation of death although the testator died within three weeks after the transfer. The testator had a natural right to give this stock to his wife, and his wife took possession of it and voted upon



it and the circumstances under which it was transferred show that his death was not in mind in making the transfer. The fact that he made a will on the same day was not evidence of the contemplation of death except as a remote contingency. There is a strong dissenting opinion on the ground that the testator had been advised to put his worldly affairs in order and that he was too weak to sign the assignment and was at the time desperately ill, and that positive evidence of an intention to evade the statute should not be required. *In re Mahlstedt*, 67 N. Y. App. Div. 176, 73 N. Y. Suppl. 818.

### **Sec. 126. Purpose to Reduce Estate to Affect Widow's Election as to Dower.**

Where an old man suffering from an incurable disease makes gifts of a large portion of his property to various relatives because he is afraid that his wife will claim her statutory dower in his property, which on her death would go to his stepson, and where the object of the gifts to relatives is to avoid this result by reducing the estate so that the wife by self-interest will desire to take under his will and not her statutory interest, this gift is made "in contemplation of death" within the language of the Illinois statute.

*In re Benton*, 234 Ill. 366, 84 N. E. 1026.

### **Sec. 127. Where Deed Never Delivered.**

Where the testator had given a deed of the property in question to the sister, which deed the court finds never was delivered until after the death of the testator, the property remained the property of the testator and subject to the inheritance tax.

*Appeal of Davenport* (Pa. 1888), 14 A. 346. See also *In re Jones*, 65 Misc. 121, 120 N. Y. S. 862.

See further, *post*, s. 164.

### **Sec. 128. Where Deed Never Recorded.**

A tax may be imposed where the deed is never recorded and remains in the possession of the grantor,<sup>1</sup> but where the transaction is for consideration no tax will be imposed, though the deed is never placed on record.<sup>2</sup>

<sup>1</sup> *In re Jones*, 65 Misc. 121, 120 N. Y. Suppl. 862.

<sup>2</sup> *In re McCormick*, 15 Pa. Co. Ct. 621, 3 Pa. Dist. 838, 25 Pittsb. Leg. Int. N. S. 91.

### **Sec. 129. Deed Executed before Statute Enacted.**

A transfer before the statute was enacted cannot be in contemplation of death within its meaning.

*In re Hendricks*, 3 N. Y. Suppl. 281, 1 Con. Surr. 301. *In re Demers*, 41 Misc. Rep. 470, 84 N. Y. Suppl. 1109.

**Sec. 130. Liability of Executors.**

Where a decedent makes a deed in contemplation of death, his executors should be made to pay the tax.

*Appeal of Wright*, 38 Pa. St. (2 Wright) 507. See *In re McKennan*, 25 South Dakota 369, 126 N. W. 611, reversed on rehearing, 130 N. W. 33.

As to the liability of executors see further, *post*, s. 317.

## CHAPTER XX.

### CONSIDERATION.

- § 131. In General.
- § 132. Deed Made under Contract to Sell.
- § 133. Ante-Nuptial Contract.
- § 134. Transfer by Will for Consideration.
- § 135. Will under Contract to Leave by Will.
- § 136. Advancements.
- § 137. Services.
- § 138. Support.

#### Sec. 131. In General.

Transfers by deeds are commonly taxable only when made without consideration.<sup>1</sup> The consideration has been upheld where it consists in an agreement to erect a monument,<sup>2</sup> or to pay the transferor an annuity,<sup>3</sup> or by a mother to surrender an illegitimate child,<sup>4</sup> or an oral waiver of a previous written contract.<sup>5</sup> So where a son was in partnership with his father under a contract which provided in part that on the father's death his interest in the partnership should belong to the son, this is not a transfer taxable under the United States statute of 1898, as the son had vested rights under the partnership agreement during the life of the testator.<sup>6</sup>

<sup>1</sup> *In re Palmer*, 17 N. Y. App. Div. 360, 102 N. Y. Suppl. 236. *Blair v. Herold*, 150 Fed. 199, 158 Fed. 804, 86 C. C. A. 64.

Where the decedent conveyed a farm to his nephew for a good consideration and where the deed was never placed on record until after the grantor's death, the transfer is not subject to an inheritance tax in the absence of evidence of intent to convey. *In re McCormick*, 15 Pa. Co. Ct. 621, 3 Pa. Dist. 838, 25 Pittsb. Leg. Int. N. S. 91.

<sup>2</sup> *In re Edgerton*, 158 N. Y. 671, 52 N. E. 1124, affirming 35 N. Y. App. Div. 125, 54 N. Y. Suppl. 700.

<sup>3</sup> *In re Edgerton*, 158 N. Y. 671, 52 N. E. 1124, affirming 35 N. Y. App. Div. 125, 54 N. Y. Suppl. 700.

<sup>4</sup> *In re Demers*, 41 Misc. 470, 84 N. Y. Suppl. 1109.

<sup>5</sup> *Lamb v. Morrow*, 140 Iowa 89, 117 N. W. 1118, 18 L. R. A. N. S. 226.

<sup>6</sup> *Blair v. Herold*, 150 Fed. 199, affirmed in 86 C. C. A. 64, 158 Fed. 804. [Bequest to creditor, see *post*, s. 236.]

### Sec. 132. Deed Made under Contract to Sell.

At the time of the decedent's death she was under contract to sell lands in another state and left a conveyance thereof which was delivered on the day after her death in consideration of the price named in the contract. As the land was not subject to tax there is no tax on its proceeds.

*In re Baker*, 87 Misc. 360, 124 N. Y. Suppl. 827.

### Sec. 133. Ante-Nuptial Contract.

An ante-nuptial agreement for settlement of property made in good faith is not subject to tax,<sup>1</sup> even where the husband transferred certain stock to the wife, and the next day she transferred the same stock back to him as trustee to apply to the mutual use of the parties during their joint lives. This is not a gift to the wife in contemplation of death. The court holds that the two agreements are not contemporaneous.<sup>2</sup>

<sup>1</sup> *In re Baker*, 178 N. Y. 575, 70 N. E. 1094, affirming 83 N. Y. App. Div. 530, 38 Misc. 151, 77 N. Y. Suppl. 170.

<sup>2</sup> *In re Miller*, 77 N. Y. App. Div. 473, 78 N. Y. Suppl. 930, overruling 75 N. Y. Suppl. 929.

### Sec. 134. Transfer by Will for Consideration.

It seems to be immaterial for purposes of the inheritance tax whether the transfer by will is a gratuity or is for consideration.

The will of Jay Gould recited that his son having conducted his business for many years with great ability he had fixed the value of the son's services at five million dollars; and evidence was introduced that this legacy was by agreement in view of the son's services and was for compensation and no other purpose. The court holds, however, that the New York statute does not limit the tax to property "gratuitously given by will," but that the word "transfer" covers the gift by will, whatever the method may be, whether to pay a debt, or to discharge a moral obligation, or to benefit a relative for whom the testator entertained a strong affection. *In re Gould*, 156 N. Y. 423, 428, 51 N. E. 287, modifying 19 N. Y. App. 352.

Under the Massachusetts statute of 1909, chapter 490, part IV, section 1, a transfer for a consideration is not exempt from tax unless "the consideration, whatever form it may assume, is not only valuable, but full, by covering the value in money, or the equivalent in money of the property transferred. . . . If services rendered, or to be rendered, constitute the consideration . . . their value may be inquired into and ascertained, and where in "money's worth" they equal or exceed the fair value of the property at the death of the transferor, no tax can be imposed. If they fall below such value, there is no provision for a reduction, leaving the excess only to be taxed as a gratuity.' *Per Braley, J.*, in *State Street Trust Co. v. Stevens*, 209 Mass. 373, 95 N. E. 851.

### Sec. 135. Will under Contract to Leave by Will.

Interests under a will made in pursuance of an ante-nuptial contract to leave by will are subject to the inheritance tax where the testator had during his life a discretion to use his own property,<sup>1</sup> but not where the contract creates vested interests in the beneficiaries, as then their rights accrue under the contract and not under the will.<sup>2</sup>

<sup>1</sup> The testator died in 1901 leaving a will, and the inheritance tax was compromised by the executor. An action was brought relying on an ante-nuptial contract with the testator to leave by will certain property, which agreement the testator had failed to fulfill. The action ended by a judgment for the plaintiff, and the court ordered the executors to turn over to the plaintiff the property covered by the contract. The court holds that this transfer is subject to the inheritance tax, as it was not a contract to convey, but a contract to make a will. Had the deceased performed his agreement and bequeathed the property the estate would have been subject to the tax. It does not affect the question of the liability of the estate to taxation that in consequence of the failure of the testator to carry out his promise the beneficiary was obliged to resort to a court for relief. The judgment of the court converts the devisees or heirs at law, as the case may require, into trustees for the beneficiary under the original agreement. Therefore the devolution of the property has in fact taken place under the will and such devolution is subject to the transfer tax. *In re Kidd*, 188 N. Y. 274, 279, 80 N. E. 924, reversing 115 N. Y. App. Div. 205, 100 N. Y. Suppl. 917.

A husband bought and paid for a house and lot which he had conveyed to his wife on the understanding that she should make her will devising the property to him in case she died before he died. Pursuant to this understanding she made her will and died February 20, 1866, and the court holds that the inheritance tax should be assessed on her estate. The legal title to the property and the ownership were in her when she died. "The fact that the will was made on account of an agreement to that effect by the wife when she took her title rendered it none the less an instrument creating a beneficial interest in the husband on her death, and that under the statute is the succession to be taxed." *Ransom v. United States*, Fed. Cas. 11, 574.

The testator made an agreement to leave property by will in consideration of care and support to be given him for the rest of his life and he made a will carrying out the agreement. The court finds that this is not a "bona fide purchase for full consideration for money or money's worth made . . . to take effect . . . after the death of the grantor." The court finds that the devisee took no title in her lifetime, but that the words quoted applied only to a deed and not to a will. As the will was made and allowed the devisee is bound by an effective performance of the agreement and must take compensation under the will, and as an incident of the transfer of the estate to her she must suffer the assessment of the tax. The court suggests that for actual disbursements incurred in the service the devisee may well be a creditor of the estate. *In re Perry* (Mass. Middlesex County Probate Court, July, 1911).

<sup>2</sup> Where in 1899 the testator entered into an ante-nuptial contract in writing, by the terms of which in consideration of his marriage he agreed to provide for

her by his last will and testament in case she survived him, the court holds that a provision under his will is in the nature of a debt and is therefore not subject to taxation under the transfer tax law. *In re Baker*, 178 N. Y. 575, 70 N. E. 1094, affirming 83 N. Y. App. Div. 530, 82 N. Y. Suppl. 390, 38 Misc. 151, 77 N. Y. Suppl. 170.

The testator devised all his property to his mother and entered into a written contract with her that in consideration of the devise she would leave by will one-half of the property she received to A. B. The testator died leaving his mother surviving and on her death she devised the property in accordance with her contract. The inheritance tax act was passed after the making of the contract by the mother and before her death, and the court holds that the property passing to A. B. is not subject to the tax. The court says that reading the will and contract together as they must be read, the mother took a life estate only with an obligation to leave by will to A. B. and that therefore A. B. really took under the will of the testator and not under that of the mother. The court relies on *Emmons v. Shaw*, 171 Mass. 410, 50 N. E. 1033, and *In re Lansing*, 182 N. Y. 238, 74 N. E. 882, in both of which cases the exercise of a power to appoint by will was referred to the original will and no tax is levied where the statute was passed after the original will went into effect. *Winn v. Schenck*, 33 Ky. L. Rep. 615, 110 S. W. 827.

### Sec. 136. Advancements.

Advancements are subject to the inheritance tax, as they are not made on valuable consideration.

Sums lent in advance to the sons are not regarded as advancements, but they are claims belonging to the estate, and hence they are subject to the inheritance tax. *In re Bartlett*, 4 Misc. Rep. 380, 25 N. Y. Suppl. 990.

The United States statute of 1864 covers an advance made by a father to his son, as it is a gift made without valuable or adequate consideration. The fact that the son was named in his father's will does not give him any vested or contingent estate but is a bare possibility not assignable and can therefore not be made the basis for a consideration. *United States v. Banks*, 17 Fed. 322.

Long prior to the death of the testator he advanced to the beneficiaries on account of their legacy at different times sums which aggregated four thousand dollars and took from them their bonds in corresponding amounts conditioned for the payment during his life of an annuity or yearly sum equal to the interest at six per cent on the advancements. The court holds that this was really a device to evade the tax and its meaning that the testator should receive a life income from his legacy and that full enjoyment of the principal should be had by the legatee only after the testator's death. *In re Conwell*, 5 Pa. Co. Ct. 368, 22 Wkly. Notes Cas. 183.

### Sec. 137. Services.

A deed for services may well be found to be made on adequate consideration and therefore not subject to the tax,<sup>1</sup> but the tax is due where the grantor transferred by deed all his real and personal prop-

erty in consideration of the grantee's services rendered and to be rendered, in trust, nevertheless, for the use and benefit of the grantor during the term of his natural life, and at his death to become the property of the grantee absolutely. There was a collateral agreement to the effect that the grantor during his life should have the right to use any portion of the properties mentioned, and as the grantee never got full title, the tax must be assessed.<sup>2</sup>

Where a legacy is stated to be for services, the legatee should renounce his legacy and prove as a creditor, as otherwise he will be taxed as a legatee.<sup>3</sup>

<sup>2</sup> *United States v. Hart*, 4 Fed. 292.

The testator's wife died in 1897, leaving a daughter thirty-five years old, who was a deaf mute. After the death of the mother a companion for the daughter who had lived in the family married, and thereafter the testator entered into a contract with another companion whereby in consideration of her continuing to act as companion of and caring for the daughter as long as the daughter lived, the testator undertook to convey and transfer to the daughter all the property he possessed. The comrade faithfully performed her part of the contract until 1904, when the daughter died and the testator conveyed from time to time various parts of his property to the companion. It appeared that the companion had exclusive dominion over the property. The testator was seventy-four years old when he made the agreement, but he was in good health though not strong. The testator might well expect the daughter to outlive him; but he did not transfer his property to his daughter or in trust for her. Instead he sold it in consideration of a contract for her care, the performance of which began and was finished in her lifetime. The motive for transferring the property was not his impending death but his desire to provide for his daughter's future whether he lived or died. The contemplation of death must be the impelling motive without which the conveyance would not be made, in order to subject a transfer of property to the inheritance tax. *People v. Burkhalter*, 247 Ill. 600, 93 N. E. 379.

The person claiming exemption for services must show that they equalled in value the amount transferred. *State Street Trust Co. v. Stevens*, 209 Mass. 373, 95 N. E. 851.

<sup>3</sup> *In re Skinner*, 45 Misc. 559, 92 N. Y. Suppl. 972 (s.c. 106 N. Y. App. Div. 217, 94 N. Y. Suppl. 144).

<sup>2</sup> The testator gave a legacy to a doctor in view of his care and services during the testator's years of sickness "without asking any reward for services rendered, as he knew my means were somewhat limited."

"By neglecting to present any account to the executor, or prove any claim against the estate, and having accepted the gratuity which the deceased provided for him in her will, it was the duty of the executor, on its payment to him, to deduct therefrom the tax which had been assessed by the surrogate. If he desired to escape the payment of the tax, or was dissatisfied with the amount of the legacy, he should have established his debt, if he had any, against the estate, and had it paid by the executor in the usual manner, and let the legacy to him go into the residuary assets.

'The times have been  
That, when the brains were out, the man would die,  
And there an end; but now they rise again,  
With twenty mortal murders on their crowns,  
And push us from our stools.'

So, in the settlement of estates, the legal skeletons of stale claims and outlawed demands stalk forth from their charnel houses and their graves, and seek to push from their stools the guests whom the testator has invited to the feast." *Per* Kennedy, S., in *In re Doty*, 7 Misc. Rep. 193, 56 N. Y. St. 626, 27 N. Y. Suppl. 653, 656.

### Sec. 138. Support.

A deed made in good faith in consideration of the support of the grantor,<sup>1</sup> reserving the right to reside on the premises,<sup>2</sup> is made on a valid consideration and is not subject to the transfer tax. So where the testator, in 1900, joined with his wife in making a deed of real estate to the son of his adopted child in consideration of support for himself and his wife for the rest of their lives, and the son carried out the contract faithfully, and the testator died in 1906, having by his will provided that certain expenses should be paid out of the personal estate and not by the son as the contract required, the court holds that the property so transferred is not subject to the inheritance tax. The son took immediate possession of the land and continued to occupy the same down to the date of trial. The son paid the taxes on the land, had full possession, and the testator never claimed ownership after the conveyance, in fact expressly disclaimed any interest in the land, and many times asserted that it belonged exclusively to the son. It was not suggested that these arrangements were for the purpose of defeating the inheritance tax.<sup>3</sup>

<sup>1</sup> *In re Hulse*, 15 N. Y. Suppl. 770 ("in consideration of a home for me at his house during my life").

<sup>2</sup> *In re Hess*, 187 N. Y. 554, 80 N. E. 1111, affirming 110 N. Y. App. Div. 476, 96 N. Y. Suppl. 990.

<sup>3</sup> *Lamb v. Morrow*, 140 Iowa 89, 117 N. W. 1118, 18 L. R. A. (N. S.) 226.



## CHAPTER XXI.

### POWERS.

§ 139. In General.

§ 140. What Law Governs.

§ 141. When Power is Created before Passage of Statute.

§ 142. Immaterial Whether Power Created by Will or by Deed.

§ 143. Where Appointment is to Same Persons Named in Original Instrument.

#### Sec. 139. In General.

Powers are usually treated in inheritance statutes as merely designating interests under the will of the original decedent. A tax on interests under a power created by will should be treated for the purposes of the inheritance tax as though the interests arose under the will itself.<sup>1</sup> Therefore relationship must be reckoned as from the original decedent and not from the donee of the power.<sup>2</sup> Some statutes, however, notably New York, assess the tax on the exercise of the power itself, and in such states the fund is treated for taxing purposes as passing from the donee directly to the beneficiary,<sup>3</sup> and remainder interests under the power are taxable only on the exercise of the power and not as a remainder under the original will.<sup>4</sup> Such a tax must be on the value of the property transferred under the power.<sup>5</sup> Where the donee of the power of appointment in her will gave a direction to repay a loan heretofore made to her out of the fund over which she exercised her power, this is a transfer to the creditor, and was taxable under the New York statute of 1897.<sup>6</sup>

Where the testator gave property to his wife to be disposed of as she might think proper without any remainder or trust being created, this was an absolute estate to the wife, and therefore on her death, without exercising her power, there was no reason for levying a tax on the heirs of the original testator.<sup>7</sup>

The value of an estate subject to a power should be deducted in reckoning the value of remainder interests. A will gave a certain estate in trust to pay the income to the wife for life, the remainder to the nephew; but the codicil gave the wife power to appoint the

portion of the estate given to the nephew. The court holds that from the interest of the nephew should be deducted the value of the property over which the wife had the power of appointment.<sup>8</sup>

A statute imposing a tax on transfers from persons dying seized of property does not cover an exercise of a power by will of a *cestui*.<sup>9</sup>

<sup>1</sup>*Emmons v. Shaw*, 171 Mass. 410, 413. *In re Stewart*, 131 N. Y. 274, 30 N. E. 184, 14 L. R. A. 836. *In re Backhouse*, 185 N. Y. 544, 77 N. E. 1181, affirming 110 N. Y. App. Div. 737, 96 N. Y. Suppl. 466. As to exemptions, see *post*, s. 254.

The collateral inheritance tax is assessed only on property which was the absolute property of the testator and not on that of which she only held the power of appointment. *In re Lisle*, 22 Pa. Super. Ct. 262 (1903).

<sup>2</sup>*Commonwealth v. Williams*, 13 Pa. St. (1 Harris) 29.

Where, however, the power of appointment is exercised improperly, the estate passes as the estate of the donee to collaterals of the donee. *Commonwealth v. Sharpless*, 2 Chest. Co. Rep. (Pa.) 246.

<sup>3</sup>*Minot v. Stevens*, 207 Mass. 588, 93 N. E. 573, under St. 1909, c. 527, differing from the former statute construed in *Emmons v. Shaw*, 171 Mass. 410. *In re Rogers*, 172 N. Y. 617, 64 N. E. 1125, affirming 71 N. Y. App. Div. 461, 75 N. Y. Suppl. 835. *In re Walworth*, 61 N. Y. App. Div. 171, 72 N. Y. Suppl. 984 (holding that relationship must be reckoned from the donee of the power).

<sup>4</sup>*In re Howe*, 176 N. Y. 570, 68 N. E. 1118, affirming 86 N. Y. App. Div. 286, 83 N. Y. Suppl. 825.

<sup>5</sup>*In re Tucker*, 27 Misc. Rep. 616, 59 N. Y. Suppl. 699.

The testator died in December, 1887, leaving a life estate with a power of appointment in the life tenant. The life tenant died in 1904 after exercising the power, and the court holds that although all property was made subject to the tax under the will of the original testator, still the exercise of the power of appointment is taxable under the statute of 1897. The court holds that the fact that the tax was erroneously assessed in 1888 on the whole interest instead of merely on the life interest does not prevent the collection of the tax on the exercise of the power of appointment. *In re Buckingham*, 106 N. Y. App. Div. 13, 94 N. Y. Suppl. 130.

<sup>6</sup>*In re Rogers*, 172 N. Y. 617, 64 N. E. 1125, affirming 71 N. Y. App. Div. 461, 75 N. Y. Suppl. 835.

<sup>7</sup>*In re Lynn*, 34 Misc. 681, 70 N. Y. Suppl. 730.

<sup>8</sup>*In re Field*, 36 Misc. Rep. 279, 73 N. Y. Suppl. 512.

<sup>9</sup>*Gallard v. Winans*, 111 Md. 434, 472, 74 A. 626.

[Contingent remainder arising by appointment after death of testator taxable, see *post*, s. 233, n. 2.]

## Sec. 140. What Law Governs.

Under statutes taxing the power as created under the will of the testator no tax is due where the power is created by the will of a non-resident,<sup>1</sup> although the donee is a resident.<sup>2</sup> Under the New York act making the exercise of the power the basis of the tax no tax can be assessed in New York where the grantor resided, if the donee of the power was a non-resident, except as to property located

in New York,<sup>3</sup> while the tax should be laid where the donee of the power was a resident of the state, although the funds were actually held by trustees outside the state.<sup>4</sup>

<sup>1</sup> What law governs exercise by non-resident of power under will of resident, see *ante*, s. 20.

<sup>2</sup> Where a citizen of Maryland created a life estate with a power of appointment to a citizen of Pennsylvania, and the life tenant exercised the power by will, the state was not entitled to an inheritance tax upon the exercise of the power. The fund was in Maryland at the testator's death, the interest made by it was received by the appointor to her own use during her lifetime and the appointee asks no more than to be permitted to receive the principal from the executors free from encumbrances or deduction as her successor. This is a plain case of a foreign legacy received abroad, which is not taxable in Pennsylvania. *Commonwealth v. Duffield*, 12 Pa. St. (2 Jones) 277, Brightly N. P. 469.

There is no transfer subject to tax in New York where all of the assets are in the state of Maryland held by trustees residing in Maryland under a will of a citizen of Maryland pursuant to the laws of that state, although the donee was a resident of New York. *In re Thomas*, 39 Misc. Rep. 136, 78 N. Y. Suppl. 981.

<sup>3</sup> The jurisdiction of the state of New York is limited to the property situated in this state at the time of the death of the donee of the power. *In re Kissel*, 65 Misc. 443, 121 N. Y. Suppl. 1088, affirmed in 142 N. Y. 934, 127 N. Y. Suppl. 1127.

<sup>4</sup> The question is not where the property was located or whether it was real estate or personal property but whether the beneficiary came into its possession through the exercise of a privilege conferred by the state of New York. The appointee under the power gets all of her rights by reason of the exercise of the power and privilege granted by the state of New York. *In re Hull*, 186 N. Y. 586, 79 N. E. 1107, affirming 111 N. Y. App. Div. 322, 97 N. Y. Suppl. 701.

### **Sec. 141. When Power is Created before Passage of Statute.**

Unless the exercise of the power is expressly made taxable, no tax should be levied where the power is created before the passage of the inheritance tax statute, though the donee dies afterwards.<sup>1</sup> A tax may, however, be valid when levied on the exercise of a power created by the will of one who died before the passage of the taxing act,<sup>2</sup> or by a deed executed before its passage.<sup>3</sup>

"It is quite immaterial that there was no statute imposing a succession tax of any kind in force when the power was created. That transfer is not taxed, and the statute makes no effort to reach it. It is the practical transfer through the exercise of the power by will that is taxed and nothing else [under N. Y. St. 1897]. The right of the legislature to impose a tax on the privilege of exercising a power by will is not affected by the fact that no such tax was imposed when the power was created."<sup>4</sup>

However, the provision in the New York act of 1897, that the failure or omission to exercise the power of appointment subjects the property to a transfer tax in the same manner as if the donee of the power had owned the property and devised it by will, is ineffective, as where there is no transfer there can be no tax; and a transfer made before the passage of the act relating to transfers is not affected by it. If it be assumed that a remainder interest in default of the execution of a power is contingent, nevertheless it is acquired under the will of the testator and cannot be subject to tax when the testator died before the imposition of a transfer tax. It then became a property right in the remainderman, which was just as sacred and just as immune from any legislative attack as any other property right; and where the power of appointment is not exercised, no tax can be laid upon it.<sup>5</sup>

The Massachusetts court, on the contrary, holds that property held subject to a power may be said by the legislature to be not vested in anybody, and that when it vests in possession through a proper disposition of it, which is dependent upon the will and conduct of the donee, a succession tax may be imposed, whether the succession is determined by action or refraining from action on the part of the donee.<sup>6</sup>

Where a will left property to A. B. with power to dispose of it absolutely by will or otherwise, and further provided that any part of the property undisposed of at the death of A. B. should go to the heirs of the testator, the provision over to the heirs was void under Kentucky law, and hence the heirs took by descent from A. B. and not under the will of the testator, and therefore the succession was subject to an inheritance tax, the statute of 1906 being passed after the original testator died and before the death of A. B.<sup>7</sup>

<sup>5</sup> *Hoyt v. Hancock*, 65 N. J. Eq. 688, 55 A. 1004, relying upon *In re Harbeck* 161 N. Y. 211. The names of the appointees must be read into the original instrument though designated by a later instrument. *In re Harbeck*, 161 N. Y. 211, 55 N. E. 850, reversing 43 N. Y. App. Div. 188, 59 N. Y. Suppl. 362. See, however, *Crocker v. Shaw*, 174 Mass. 266.

<sup>6</sup> *Minot v. Stevens*, 207 Mass. 588, 93 N. E. 573. *In re Vanderbilt*, 163 N. Y. 597, 57 N. E. 1127, affirming 50 N. Y. App. Div. 246, 63 N. Y. Suppl. 1079. *In re Dows*, 167 N. Y. 227, 232, 60 N. E. 439, 52 L. R. A. 433, 88 Am. St. Rep. 508, affirming 60 N. Y. App. Div. 630 (affirmed *sub nomine*, *Orr v. Gilman*, 183 U. S. 278, 22 S. Ct. 213, 46 L. Ed. 1961). *In re Rogers*, 172 N. Y. 617, 64 N. E. 1125, affirming 71 N. Y. App. Div. 461, 75 N. Y. Suppl. 835. *In re Potter*, 51 N. Y. App. Div. 212, 64 N. Y. Suppl. 1013. *In re Brooks*, 65 N. Y. St. Rep.

255, 32 N. Y. Suppl. 176, 1 Gibbons 188. *In re Hull*, 586, 79 N. E. 1107, affirming 111 N. Y. App. Div. 322, 97 N. Y. Suppl. 701.

The testator died in 1890, and his son died in 1899, leaving a will exercising a power of appointment given him in the will of his father, and it was claimed that the New York statute of 1897, section 220, subdivision 5, was in violation of the fourteenth amendment, in violation of section 10 of article 1 of the United States constitution. The court quotes at length from *Carpenter v. Pennsylvania*, 17 How. 456, where a retroactive state statute was held constitutional. The court finds that the New York court of appeals held that it was the execution of the power of appointment which subjected grantees under the statute to the transfer tax. This conclusion is binding upon this court in so far as it involves a construction of the will and of the statute. Even if the view of the New York court was wrong, it was an error which the United States supreme court has no power to review. *Orr v. Gilman*, 183 U. S. 278, 288, 22 S. Ct. 213, 46 L. Ed. 196 (affirming *In re Dows*, 167 N. Y. 227, 60 N. E. 439, 52 L. R. A. 433, 88 Am. St. Rep. 508).

The testator died in 1874, leaving a will giving his wife one-third of his property for life, with remainder to his son and daughter, and vesting in his widow the power to appoint remainders to such of his descendants as she might by will direct. The son died in 1879, leaving property to his mother for life, remainder to his sister, and the mother died in 1896, having exercised the power of appointment in favor of her daughter. The mother's will was admitted to probate February 29, 1896, and the daughter died on that same day, and her will was admitted to probate in January, 1898, the daughter being a residuary legatee under the will of her mother. The court holds that the two estates in remainder which vested absolutely in the daughter on the death of her mother under her father's and brother's wills were taxable in passing to the residuary legatee of the daughter. The court also held that the amount to which the daughter was entitled as a residuary legatee under her mother's will was not taxable, it appearing that there had been no settlement of the executor's accounts under the will, and consequently, the amount of the residuary estate, if any there should be, was unascertained. But the court holds that when the estate of the mother is settled it will be the duty of the executor to see that the transfer tax is paid before distributing the residue to the legal representative of the daughter.

As to the two estates in remainder under the wills respectively of the father and brother of the daughter, the latter was vested with the title to the residue on the death of each testator, but possession and enjoyment were postponed until the falling in of the life estate, and when that event occurred the entire estate, legal and equitable, vested instantly in the remainderman. The executor of the daughter, under the circumstances, was liable to pay the transfer tax before he could distribute the personal property in his hands, or to the possession of which he was immediately entitled. *In re Rohan-Chabot*, 167 N. Y. 280, 283, 60 N. E. 598, affirming 44 N. Y. App. Div. 340.

<sup>3</sup> *Crocker v. Shaw*, 174 Mass. 266 (although the statute contains no express provision making it applicable whether the transfer was made before or after the passage of the act).

A. by trust deed executed prior to the passage of Mass. St. 1891, c. 425, placed property in trust for herself for life and on her death subject to appointment under her will. She died in 1895 leaving a will and the court holds that interests

under her will are taxable. The court holds that the property passed by a deed intended to take effect in possession or enjoyment after the death of the grantor. It makes no difference that the donor of the power and the person executing it are one and the same. *Crocker v. Shaw*, 174 Mass. 266.

The statute of 1897 does not attempt to impose a tax upon property but upon the exercise of the power of appointment. The beneficiary is compelled to resort to the will in order to establish his rights, for the deed alone would not suffice. "The privilege of making a will is not a natural or inherent right, but one which the state can grant or withhold in its discretion. If granted, it may be upon such conditions and with such limitations as the legislature sees fit to create. The payment of a sum in gross, or of an amount measured by the value of the property affected, may be exacted, or the right may be limited to one or more kinds of property and withdrawn as to all others. The legislature could provide that no power of appointment should be exercised by will, or that it should be exercised only upon the payment of a gross or ratable sum for the privilege. It could exact this condition, independent of the date or origin of the power. All this necessarily flows from the absolute control by the legislature of the right to make a will." Quoting *In re Vanderbilt*, 163 N. Y. 597, and *In re Dows*, 167 N. Y. 227. *Per Vann, J.*, in *In re Delano*, 176 N. Y. 486, 491, 64 L. R. A. 279, 177 N. Y. 540, 69 N. E. 1122, reversing 82 N. Y. App. Div. 147, 81 N. Y. Suppl. 762 (affirmed *sub nomine*, *Chanler v. Kelsey*, 205 U. S. 466, 27 S. Ct. 550, 51 L. Ed. 882).

<sup>4</sup> *In re Delano*, 176 N. Y. 486, 494, 64 L. R. A. 279, 177 N. Y. 540, 69 N. E. 1122, reversing 82 N. Y. App. Div. 147, 81 N. Y. Suppl. 762 (affirmed *sub nomine*, *Chanler v. Kelsey*, 205 U. S. 466, 27 S. Ct. 550, 51 L. Ed. 882).

<sup>5</sup> *In re Lansing*, 182 N. Y. 238, 248, 74 N. E. 882, modifying 103 N. Y. App. Div. 596. This decision is considered and upheld in a note in 19 *Harvard Law Review* 121.

<sup>6</sup> *Minot v. Stevens*, 207 Mass. 588, 93 N. E. 573.

<sup>7</sup> *Commonwealth v. Stoll*, 132 Ky. 234, 116 S. W. 687, withdrawing opinion, 114 S. W. 279.

## **Sec. 142. Immaterial whether Power Created by Will or by Deed.**

It is immaterial how the power is created, whether by will or by deed, in considering the right to tax the exercise of the power.

*In re Delano*, 176 N. Y. 486, 493, 64 L. R. A. 279, 177 N. Y. 544, 69 N. E. 1122, reversing 82 N. Y. App. Div. 147, 81 N. Y. Suppl. 762 (affirmed *sub nomine*, *Chanler v. Kelsey*, 205 U. S. 466, 27 S. Ct. 550, 51 L. Ed. 882).

## **Sec. 143. Where Appointment is to Same Persons Named in Original Instrument.**

Where the power is exercised by appointing to the same persons as are named in the will in default of appointment, the beneficiaries have a right to elect whether to take under the original will instead of under the power.<sup>1</sup> An election to take under the original will

rather than under the power need not be in any particular form, and it is sufficient if it appears by opposition to the imposition of a transfer tax.<sup>2</sup> Where the will of the donee directs distribution according to the provisions of the original will, this is a refusal or renunciation of the power by the donee.<sup>3</sup> Where the original will is to such children as the donee may appoint, there is a necessity for the exercise of the power, and the children appointed must make their title through the donee;<sup>4</sup> but where the appointment names a portion only of the beneficiaries named in the will, they take under the will, as the appointment was an injury rather than a benefit to them.<sup>5</sup> The same result was reached where the power was exercised to four of the beneficiaries named in the will.<sup>6</sup>

<sup>2</sup> *In re Lewis*, 194 N. Y. 550, affirming 129 N. Y. App. Div. 905, reversing 60 Misc. 643, on authority of *In re Lansing*, 182 N. Y. 238, and *In re Haggerty*, 194 N. Y. 550, 87 N. E. 1120, affirming 128 N. Y. App. Div. 479, 112 N. Y. Suppl. 1017. *In re Spencer*, 119 N. Y. App. Div. 883, 107 N. Y. Suppl. 543.

In an earlier case, however, the court says that as the power of appointment was exercised by the life tenant and as it was only in case of a failure to exercise the power that the remainder vested in the children of the donee, they derived their title to the property through the exercise of the power of appointment and not directly under the will of the testator. *In re Lowndes*, 60 Misc. 506, 113 N. Y. Suppl. 1114.

<sup>3</sup> *In re Chapman*, 133 N. Y. App. Div. 337, 117 N. Y. Suppl. 679, affirming 61 Misc. 593, 115 N. Y. Suppl. 981.

<sup>4</sup> *In re Langdon*, 153 N. Y. 6, 9, 46 N. E. 1034, affirming 11 N. Y. App. Div. 220, 43 N. Y. Suppl. 419.

<sup>5</sup> *In re Cooksey*, 182 N. Y. 92, 98, 74 N. E. 880, affirming 100 N. Y. App. D v. 516, 91 N. Y. Suppl. 1091.

<sup>6</sup> *In re Ripley*, 192 N. Y. 536, 84 N. E. 574, affirming 122 N. Y. App. Div. 419, 106 N. Y. Suppl. 844. See, however, *In re Warren*, 62 Misc. 444, 116 N. Y. Suppl. 1034.

<sup>6</sup> *People v. Williams*, 127 N. Y. Suppl. 749.

## CHAPTER XXII.

### METHODS OF AVOIDING TAX.

- § 144. Any Collusive Arrangement Illegal.
- § 145. No Duty to Point out Property to Tax Officials.
- § 146. Advancement.
- § 147. Assignments by Beneficiaries.
- § 148. Brokers Holding Stock in their own Name.
- § 149. Compromise of Interests under Will.
- § 150. Consideration.
- § 151. Transfers in Contemplation of Death.
- § 152. Creation of Corporation Leaving Life Estate in Decedents.
- § 153. Disclaimer by Beneficiary.
- § 154. Disclaimer by Executor.
- § 155. Executor Paying Legacy with his own Money.
- § 156. Homestead Set Off.
- § 157. Insurance or Beneficial Societies.
- § 158. Property Held Jointly.
- § 159. Marshaling Local Assets and Debts.
- § 160. Various Gifts to Same Person.
- § 161. Quick Transfer of Stock in Foreign Corporation.
- § 162. Premature Distribution after Taking Assets out of Jurisdiction.

#### Sec. 144. Any Collusive Arrangement Illegal.

"No mere device intended to evade the payment of tax due the commonwealth can be effective. Courts look beyond the form of any arrangement by which the commonwealth is deprived of a tax to its substance to ascertain its real purpose. An agreement to set aside a will and to make distribution in accordance with its provisions will not relieve legacies passing to collaterals from tax. Such an agreement is evidently collusive. But money paid in good faith in compromise of threatened litigation is not subject to tax. *Pepper's Estate*, 159 Pa. St. 508; *Kerr's Estate*, 159 Pa. St. 512."

*Per* Fell, J., in *In re Hawley*, 214 Pa. St. 525, 527, 63 A. 1021.

#### Sec. 145. No Duty to Point out Property to Tax Officials.

Unless clearly set forth in the taxing statute the executor is under no duty to aid the tax collectors in locating the property of the estate<sup>1</sup> outside the estate of a non-resident decedent.<sup>2</sup>



<sup>1</sup> Under the statute of 1885, chapter 483, the administrator was under no duty or obligation to voluntarily aid the appraiser in any manner whatever in making the appraisal; and the court holds therefore that the administrator was not guilty of any fraudulent acts in failing to apprise the appraiser of certain claims belonging to the estate. *In re Smith*, 14 Misc. Rep. 169, 35 N. Y. Suppl. 701.

<sup>2</sup> *In re Bishop*, 82 N. Y. App. Div. 112, 81 N. Y. S. 474.

[What inventory should contain, see *post*, ss. 323, 324.]

#### **Sec. 146. Advancements.**

Advancements as a means to avoid the inheritance tax are considered above, in section 136.

#### **Sec. 147. Assignments by Beneficiaries.**

An assignment by a beneficiary to another can have no effect on the inheritance tax.

See further, *post*, s. 224.

#### **Sec. 148. Brokers Holding Stock in their own Name.**

It is clear that the common practice of carrying stock in the name of stockbrokers will not of itself suffice to avoid taxation, although it may in some cases render it a little more difficult for the tax collectors to discover the property. The practice has the advantage of giving the executors more freedom in a quick sale of securities in those states which require payment of the tax before transfer. Where the decedent does business in one state and resides in another, this arrangement might enable the executors to remove securities from the state where the decedent had his place of business, when the actual location of the securities is made a basis for taxation.

The futility of the practice was well explained in a New York case where the decedent, a resident of Louisiana, had ordered the purchase through her stockbrokers in New York of certain stock, and the certificates were taken in the name of the brokers, but paid for by her, and the stock was transferred on the books of the corporation, which was a New York corporation, to the brokers, who thereupon endorsed their name upon the blank transfer printed upon the certificates, so that the same could be transferred to the testatrix, and the certificates so endorsed were then delivered by the brokers to the testatrix. The court holds that although she did not have the legal title to the stock at the time of her death, she did have an equitable title which at any time she could have transferred into a legal title by simply presenting the certificates

to the officers of the corporation, and that this was an interest in the property which passed by her will and which was taxable. She was entitled at any time to become vested with the legal title, and certainly this equitable title was something more than a mere chose in action. It was in effect a property interest in the domestic corporation.<sup>1</sup>

However, if an investor carries stock in a foreign corporation in the name of a broker in his own state he practically may avoid taxation at the hands of states which assume to tax stock of their corporations owned by non-residents.

It has been suggested that stock might be placed in the hands of brokers or others under a trust agreement, that notes be then issued to the beneficiaries, thus rendering their claims debts to be allowed like other debts.

<sup>1</sup> *In re Newcomb*, 172 N. Y. 608, 64 N. E. 1123, affirming 71 N. Y. App. Div. 606, 76 N. Y. Suppl. 222.

#### **Sec. 149. Compromise of Interests under Will.**

A compromise may be so framed that no tax can be collected, in some circumstances.

*In re Hawley*, 214 Pa. St. 525, 63 A. 1021. See further, *ante*, s. 106.

#### **Sec. 150. Consideration.**

The effect of the existence of consideration in avoiding the inheritance tax is considered in a separate chapter (Chapter XX).

#### **Sec. 151. Transfers in Contemplation of Death.**

The most common attempt to evade the tax is by means of transfers of one kind or another during the life of the decedent, in contemplation of death, to the objects of his bounty, and such transfers are so common that we require a separate chapter for their consideration (Chapter XIX).

#### **Sec. 152. Creation of Corporation Leaving Life Estate in Decedent.**

Where an owner of large property created a corporation to which he conveyed all his property, and then had the corporation issue the stock in such a way that he held a life estate only in it, the court was precluded by the stipulation under which the case came before it that there was no verbal or outside agreement not before the court from considering the question whether the agreement was

made so that the heirs would not be required to pay an inheritance tax, and the court holds that no inheritance tax is due.

· *State v. Probate Court, Washington County*, 102 Minn. 268, 294, 113 N. W. 888.

### **Sec. 153. Disclaimer by Beneficiary.**

In some cases a renunciation by the legatee may be effective in avoiding the transfer tax. The most effective method for evading the collateral inheritance tax yet devised appears to have been sanctioned by the court in *In re Stone*, 132 Iowa 136, 109 N. W. 465. In this case the collateral legatees and others interested under the will all united in renouncing the provisions of the will and agreeing that the property might be distributed as in case of intestacy, and the court holds that the parties have a right to do this and that the result is that the state has no interest in the collection of any collateral inheritance tax, as the property then passed entirely to lineal descendants not subject to the tax. The question whether the parties had any collateral agreement among themselves as to the distribution, so that the collateral legatee really obtained some benefit, was not suggested to the court, and the effect of any such agreement was not involved in the decision.

In a New York case the legatees renounced the legacy, and the property bequeathed therefore went to the residuary legatees. The court therefore holds that the tax should be laid at the rate as if the legacy had been originally given to the residuary legatees. The tax is laid solely upon the transfer and not upon the property transferred, nor upon the estate of the legatee. If the legatee renounces a gift, refuses to receive it, no tax can be collected with respect to him because there has been no transfer to him. His right to renounce the privilege of accepting the donation is not denied or forbidden by the statute, and on his effective renunciation the title or ownership of the property remains in the estate to be disposed of under the terms of the will, and the succession is taxable in accordance with the nature of the ultimate devolution.<sup>1</sup>

Where it appeared that the beneficiaries under a residuary clause conceded its invalidity as a perpetuity, and abandoned all claim to the property to the heirs, who sold it and received the consideration therefor, and that it did not pass under the will, the surrogate had jurisdiction to find that the property did not pass under the will, and that no tax was assessable against the residuary beneficiaries named.<sup>2</sup> In Pennsylvania, however, it has been held in the lower

courts that as title to the property passed on the death of the decedent, a subsequent renunciation cannot affect the liability of the beneficiary to taxation.<sup>3</sup>

<sup>1</sup> *In re Wolfe*, 179 N. Y. 599, 72 N. E. 1152, affirming 89 N. Y. App. Div. 349. The court affirms and distinguishes *In re Wolfe*, 89 N. Y. App. Div. 349, 179 N. Y. 599, as there was no transfer by will to the executors, and therefore no transfer tax could be imposed as the executors renounced the gift. *In re Cook*, 187 N. Y. 253, 79 N. E. 991, reversing 114 N. Y. App. Div. 718, 99 N. Y. Suppl. 1049.

<sup>2</sup> *In re Ullman*, 137 N. Y. 403, 33 N. E. 480.

<sup>3</sup> *In re Frank*, 9 Pa. Co. Ct. 662. *In re Small*, 11 Pa. Co. Ct. 1.

### **Sec. 154. Disclaimer by Executor.**

The surrogate has authority under the New York statute of 1892 to appoint an appraiser to appraise property adjudged to be subject to the will of a deceased person in an action between the heirs, although the executor had claimed that it was not a part of the estate, as it had been given to a certain heir during the life of the decedent.

*In re Lansing*, 31 Misc. Rep. 148, 64 N. Y. Suppl. 1125.

### **Sec. 155. Executor Paying Legacy with his own Money.**

Where the executor contributes the legacy out of his own funds, no tax is payable. Where one of the executors previous to the death of the testator had so invested the testator's property that it was worthless, and then on his death destroyed his will, one of the legatees by threats of criminal prosecution obtained payment of her legacy from the executor, at the same time assigning the legacy and all her interest in the same to the executor. The legacy was paid with the individual property of the executor. The legacy was two thousand dollars, and the total assets of the estate of the testator amounted to less than eight hundred dollars. The court holds that no transfer tax can be levied on this legacy, as the legatee never received any property from the estate and has in fact assigned all her rights against the estate.

*In re Weed*, 10 Misc. Rep. 628, 32 N. Y. Suppl. 777.

### **Sec. 156. Homestead Set Off.**

In some states the parties may avoid the tax by having property set aside as homestead under local statutes. We have considered this topic under s. 110.

**Sec. 157. Insurance or Beneficial Societies.**

Investors are commonly safe in investing their money in life insurance or beneficiary policies of various kinds, as we have endeavored to show under section 107.

**Sec. 158. Property Held Jointly.**

The effect of making deposits in the joint names of two or more persons is considered elsewhere at section 105.

Some trust companies will not transfer stock held jointly on the signature of the surviving owner.

The Indiana statute prohibiting a safe deposit company from delivering the contents of a box leased by deceased jointly on death of a lessee except on ten days' notice to state officials, is valid.<sup>1</sup>

Where the testator and his brother had been doing business under an agreement dated 1877, reciting that the parties are "jointly" interested in firm property, on the death of the intestate the court on the evidence finds that the whole estate of the intestate is subject to the inheritance tax.<sup>2</sup>

<sup>1</sup> *National Safe Deposit Co. v. Stead*, 250 Ill. 584, 95 N. E. 973.

<sup>2</sup> *In re Wormser*, 28 Misc. 608, 59 N. Y. Supl. 1088.

**Sec. 159. Marshaling Local Assets and Debts.**

The executors of estates with property in more than one state should use great care in choosing the property they will use for paying legacies and debts, for a proper marshaling of assets may well make large differences in the taxes payable. We have treated this subject fully under sections 204, 354.

**Sec. 160. Various Gifts to Same Person.**

Where in separate items of a will two or more legacies or devises are given to the same person, it matters not whether the property pass under one or more items of the will or whether the property passing under more than one item be real or personal, the tax is collectible on the aggregate of such property above the exemption.

*In re Inheritance Tax*, 7 Ohio N. P. 547, 5 Low. Dec. 555.

**Sec. 161. Quick Transfer of Stock in Foreign Corporation.**

In states which impose no penalty on foreign executors or administrators for failure to pay the tax, and prescribe no lien, there is grave doubt as to the ability of the state to collect the tax from a

non-resident executor or administrator, provided he can get the stock transferred before the state takes any action. As a practical matter the state authorities are not likely to know of the death of a non-resident stockholder, and it would seem easy in these states to have the stock quietly transferred. The authors see no reason, however, why even after the stock has been transferred the state officials could not sue in the state of the domicile and recover the tax in an ordinary action. The chances of their being advised of the death of a non-resident decedent in time to take such action would seem to be slight. For example, in Michigan, stock in Calumet & Hecla and Osceola Mining Company can be transferred without any reference to the state authorities.

[See further, *post*, §. 203.]

#### **Sec. 162. Premature Distribution after Taking Assets out of Jurisdiction.**

A proceeding to fix the transfer tax under the statute of 1892 is not lost, as to personal property in New York belonging to a foreign testator, by the fact that his property is all distributed and the accounts of the executors closed under the laws of the domicile. Having done that, and having taken out of New York all the property of the decedent and distributed it, they cannot now urge lack of jurisdiction to fix a tax in New York.

*In re* Hubbard, 21 Misc. Rep. 566, 48 N. Y. S. 869.

## CHAPTER XXIII.

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### TITLE OF DECEDENT.

- § 163. Before Possession Taken of Certificates of Stock.
- § 164. Deeds Signed and not Delivered.
- § 165. Property Already Brought by Legatee.
- § 166. Property Standing in Name of Another.

#### **Sec. 163. Before Possession Taken of Certificates of Stock.**

A gift in contemplation of death was made by a father to a daughter, and she died within a few days of his death before the certificates of stock had been actually transferred to her, and before she had received any dividends. The stock passed under her will as her property, and so passing is a transfer under the transfer tax law of the state which must suffer a tax.

*In re Borup*, 28 Misc. Rep. 474, 59 N. Y. Suppl. 1097.

#### **Sec. 164. Deeds Signed and not Delivered.**

Where a testator signed certain deeds and other papers and placed them in envelopes described as property of persons by whom they were endorsed, and placed the envelopes in a box in a bank, this property was still his for the purposes of the tax where he received the income from it and treated it as his own during his life.

*In re Sharer*, 36 Misc. Rep. 502, 73 N. Y. Suppl. 1057.

See further, *post*, ss. 127, 128.

#### **Sec. 165. Property Already Bought by Legatee.**

Property nominally included in the will which had been already bought and paid for by the legatees is not subject to tax. It seemed that the provisions in the will were due to the anxiety of the testator that his sisters should not be disturbed in the occupancy of the home he granted to them.

*In re Morris* (Orph. Ct.), 1 Pa. Dist. R. 818.

**Sec. 166. Property Standing in Name of Another.**

Where a large part of the estate in another state is invested in the name of a nephew of the testator, this money is taxable under the law of Pennsylvania.<sup>1</sup>

The state must show not only that the persons against whom it claims are not of the exempted class, but that the estate out of which the tax is alleged to be payable passed to those persons from one who died seized or possessed of the same. Under the Pennsylvania act actual seisin and actual possession is necessary, and a person cannot be seised of an estate which is limited to take effect only after his death.<sup>2</sup> So the exercise of a power by a *cestui* is not taxable under such a statute.<sup>3</sup>

<sup>1</sup> *In re Miller*, 182 Pa. St. 157, 162, 37 A. 1000, citing *In re Williamson*, 153 Pa. St. 508, 26 A. 246, 32 Wkly. Notes Cas. 93.

Stock standing in name of stockbroker, see *ante*, s. 148; in joint names, see *ante*, s. 158.

<sup>2</sup> *In re Swann*, 12 Pa. Co. Ct. 135.

<sup>3</sup> *Gallard v. Winans*, 111 Md. 434, 472, 74 A. 626.



**Sec. 172. Leasehold Interests.**

Leasehold interests under long leases made real estate by statute should be treated as real estate.

Perpetual leases on real estate in Japan are real estate. *In re Vivanti*, 138 N. Y. App. Div. 281, 122 N. Y. Suppl. 954, reversing 63 Misc. 618, 118 N. Y. Suppl. 680.

## CHAPTER XXV.

### PERSONAL PROPERTY.

- § 173. When Estate Insolvent.
- § 174. Charge on Future Rents.
- § 175. Claim against Estate of Another.
- § 176. Gift on Condition Legacies Paid.
- § 177. Fraudulent Conveyance.
- § 178. Good Will.
- § 179. Income after Death.
- § 180. Lessee's Interest.
- § 181. Stock in Joint Stock Association.
- § 182. Money for Investment.
- § 183. Loan to Partnership.
- § 184. Profits of Partnership.
- § 185. Seat in Stock Exchange.
- § 186. Conversion in General.
- § 187. Conversion in Pennsylvania.
- § 188. Manumission of Slave.

#### Sec. 173. When Estate Insolvent.

Where the estate is insolvent so that there is no inheritance or legacy for the heirs, no inheritance tax can be collected.

The plaintiff brought suit to recover the amount of the internal revenue tax he paid in 1872 to the United States collector, on the ground that he as lessee of the real estate was obliged to pay the tax to avoid eviction and that the payment inured to the benefit of the succession. The court holds that as the succession was insolvent there was no inheritance or legacy for the heirs and it was not liable to an internal revenue tax, and therefore no recovery could be had. *Johnson v. Dunbar*, 28 La. Ann. 271.

#### Sec. 174. Charge on Future Rents.

A legacy charged on the future rents and profits of land is still subject to tax as personal property.

Where a devise is made to a lineal descendant with the direction to her to pay two thousand dollars a year out of the rents and profits of the land devised, the words of the Pennsylvania act of 1887 are sufficient to cover this bequest although payable by the devisee of the land out of its future rent. *In re Lea*, 194 Pa. St. 524, 45 A. 337.

**Sec. 175. Claim against Estate of Another.**

A claim against the estate of another is property subject to the inheritance tax.

*In re Huber*, 86 N. Y. App. Div. 458, 83 N. Y. Suppl. 769. *In re Rohan-Chabot*, 167 N. Y. 280, 284, 60 N. E. 598.

Appraisal of claims, see *post*, s. 340.

**Sec. 176. Gift on Condition Legacies Paid.**

Where an estate is given to a widow on condition she pay legacies to collateral relatives, the gift to the collateral relatives is direct and is subject to the inheritance tax.

*Nieman's Estate*, 131 Pa. St. 346, 351, 18 A. 900.

**Sec. 177. Fraudulent Conveyance.**

Where a partner in a firm invested the profits with the firm and transferred this account to his wife to protect his wife from his creditors, on the death of the wife a transfer tax should be levied on the property.<sup>1</sup>

The executor claimed that certain property had been given to one of the heirs under the will, and the heir also claimed the gift, and the surrogate in a proceeding to assess the tax failed to assess this property on the theory that it had been given to the heir. Subsequently, in a contest between the heirs, it was determined that this gift was fraudulent and void and the court then decided that as it now appeared that the property was transferred by the will of the testator and not by gift, it became taxable under the statute.<sup>2</sup>

<sup>1</sup> *In re Anthony*, 40 Misc. Rep. 497, 82 N. Y. Suppl. 789.

<sup>2</sup> *In re Lansing*, 31 Misc. Rep. 148, 64 N. Y. Suppl. 1125.

**Sec. 178. Good Will.**

The good will of a firm is taxable under the transfer tax,<sup>1</sup> and so where a business was conducted and carried on by an administratrix in the name of the decedent, the good will of the business is an asset in her hands, and as such it is taxable.<sup>2</sup>

<sup>1</sup> *In re Dun*, 40 Misc. Rep. 509, 82 N. Y. Suppl. 802, reversing 39 Misc. 616, 80 N. Y. Suppl. 657.

See further, *post*, s. 341.

<sup>2</sup> *In re Keahon*, 60 Misc. 508, 113 N. Y. Suppl. 926.

### Sec. 179. Income after Death.

Income received after the testator's death is not included in the appraisal.<sup>1</sup> The will directed that the income of the testator's estate for the first year after his death should be added to the principal, then both principal and interest applied indiscriminately to the payment of expenses, debts and legacies. The result is that the corpus of the estate has been preserved to the extent of the first year's income, upon which sum no collateral inheritance tax was paid. The court holds that the direction of the testator resulted in allowing so much more of the principal to pass to the collateral heirs, but that this direction does not increase the amount liable to the tax.<sup>2</sup>

<sup>1</sup> *In re Miller*, 5 Pa. Co. Ct. 522, 22 W. Notes Cas. 11. See *ante*, s. 334, n. 2.

The will bequeathed to the testator's partners his interest in the partnership assets on condition that they pay ninety per cent of its appraised value to his executors in fifteen equal annual instalments. It appeared that the probate court made a finding that the inheritance tax should be fixed from time to time as the money or property of the estate should come into the hands of the executors and not at the present value of future payments to be made by the partners. The supreme court finds this finding immaterial on the question of the municipal tax. *Port Huron v. Wright*, 150 Mich. 279, 14 Detroit Leg. N. 720, 114 N. W. 76.

<sup>2</sup> *In re Williamson*, 153 Pa. St. 508, 521, 26 A. 246, 32 W. Notes Cas. 93, 11 Pa. Co. Ct. 235.

See further, *post*, s. 334.

### Sec. 180. Lessee's Interest.

The interest of a lessee of real estate is personal property subject to taxation under the New York act of 1896, although buildings erected by the tenant may be assessed to him as land under the tax law.

*In re Althause*, 168 N. Y. 670, 61 N. E. 1127, affirming 63 N. Y. App. Div. 252, 71 N. Y. Suppl. 445.

### Sec. 181. Stock in Joint Stock Association.

Shares in a joint stock association are personal property although its assets are principally real estate, and the real estate should be considered in appraising the value of the stock even under an inheritance tax that leaves real estate exempt.

The court discusses the difference between joint stock associations and corporations and concludes that "the fact that a joint stock association is not in legal contemplation a corporation, and not liable to taxation under acts seeking

to reach corporations, in no way militates against the position assumed by the comptroller in this case. It is competent for private individuals to create a joint stock association, issue shares of stock, and in that form dispose of property by last will and testament. The associates by contract have created the same situation as to shares of stock that a corporation secures by charter." *Per* Bartlett, J., in *In re Jones*, 172 N. Y. 575, 85 N. E. 570, 60 L. R. A. 476, reversing 69 N. Y. App. Div. 237, 74 N. Y. Suppl. 702.

### **Sec. 182. Money for Investment.**

The decedent, a non-resident, three days before his death sent one hundred thousand dollars to New York city for the purpose of purchasing stock in a foreign corporation, and he died before the transaction was completed. The court holds that this money is not subject to the New York transfer tax.

*In re Leopold*, 35 Misc. Rep. 369, 71 N. Y. Suppl. 1032.

### **Sec. 183. Loan to Partnership.**

Where a partner makes a loan to a partnership, this money as regards the rest of the world is capital and not a loan, therefore subject to the transfer tax on the partner's death.

*In re Probst*, 40 Misc. Rep. 431, 82 N. Y. Suppl. 396.

### **Sec. 184. Profits of Partnership.**

Profits permitted to remain on deposit with the partnership should be included among the taxable assets.

*In re Probst*, 40 Misc. Rep. 431, 82 N. Y. Suppl. 396.

### **Sec. 185. Seat in Stock Exchange.**

The court holds that a seat in the stock exchange is property and subject to tax within the meaning of the N. Y. St. 1896, c. 908, s. 242.<sup>1</sup> A seat in the stock exchange is a privilege of value subject to the inheritance tax.<sup>2</sup>

<sup>1</sup>"In determining the construction to be given to the broad and comprehensive language of section 242, we must consider that the statute has a history plainly indicating the trend of legislative action and that as to the transfer tax it is a literal reproduction of the then existing law. First enacted in 1885 (Chap. 483) the inheritance tax law was limited to property passing to collateral relatives. It was subjected to repeated amendments, the effect of which in nearly every instance was either to enlarge the class of persons subject to the tax or to extend its application to some species of property which the courts had held not to fall within its terms. The distinction between property justly subject to ordinary taxation and that liable to the imposition of the transfer tax was early appreciated. In *Matter of Knoedler* (140 N. Y. 377), a policy of life insurance payable

to the estate of the deceased was held subject to the tax. In the opinion there rendered Judge Maynard said: 'The argument is made that it is only property which is liable to taxation under the General Tax Law of the state which can be taxed under the act relating to taxable transfers, and that, inasmuch as life insurance policies cannot be included in the valuation of a taxpayer's property under the general law, they cannot be considered in assessing a tax upon the collateral inheritance. The main premise upon which this proposition rests is manifestly inadmissible. The taxable transfer law has no reference or relation to the general law, . . . it proceeds upon a new theory of the right of the government to tax and establishes a new system of taxation. It takes the right of succession to property and measures the tax in the method specifically prescribed. All property having an appraisal value must be considered, whether it is such as might be taxed under the general law or not. Many kinds of property might be enumerated which are not assessable under the general law, but which are appraisable under the collateral inheritance tax.' Such was the settled construction of the inheritance tax laws when the act of 1896 was passed. That act, as already said, was a revision of the existing law, and an attempt to bring into a single statute all existing legislation relative to taxation by the state. In *Henavie v. N. Y. C. & H. R. R. Co.* (154 N. Y. 281) Judge Vann said: 'The rule in the case of a revision of statutes is that where the law, as it previously stood, was settled either by adjudication or by frequent application of the statute without question, a mere change in the phraseology is not to be construed as a change in the law, unless the purpose of the legislature to work a change is clear and obvious.' Therefore, because section 242 prescribes that 'all property' shall be subject to the transfer tax and because the revision of the statute should not be held to work a change in the settled law unless the legislative intent to that effect is clearly manifest, we are of opinion that the seat held by the testator was subject to the tax imposed upon it." *Per Cullen, J.*, in *In re Hellman*, 174 N. Y. 254, 257, 66 N. E. 809, 95 Am. St. Rep. 582, reversing 77 N. Y. App. Div. 355, 79 N. Y. Suppl. 201.

<sup>2</sup>*In re Curtis*, 31 Misc. Rep. 83, 64 N. Y. Suppl. 574.

## Sec. 186. Conversion in General.

It is the general rule in this country that the doctrine of equitable conversion cannot be invoked to affect the imposition of the inheritance tax. So a direction to invest in real estate leaves the gift one of personal property,<sup>1</sup> and a mere power of sale,<sup>2</sup> or even an absolute direction to sell real estate, will not transform it to personal property for the purposes of the tax.<sup>3</sup> However, a direction to sell realty will make the interest personalty in the hands of the estate of the beneficiary.<sup>4</sup> So an interest in partition proceedings<sup>5</sup> and legacies to be paid from the proceeds of real estate, which the will directed the executor to sell, are personalty.<sup>6</sup>

<sup>1</sup>Where the will directed the remainder to be paid to a certain New York church "ten thousand dollars towards the building of a new church," this bequest cannot be treated as real estate, but is personal property, and by no rule of equitable

conversion can it become real estate until it has been invested in real estate as directed. It must therefore be treated as a legacy of money. *Sherrill v. Christ Church*, 121 N. Y. 701, 702, 25 N. E. 50, reversing *In re Van Kleeck*, 55 Hun 472.

<sup>2</sup>The doctrine of equitable conversion is not applicable to subject real estate to taxation. *In re Swift*, 137 N. Y. 77, 88, 32 N. E. 1096, 18 L. R. A. 709, 64 Hun 639, 16 N. Y. Suppl. 193, 19 N. Y. Suppl. 292.

<sup>3</sup>*Connell v. Crosby*, 210 Ill. 380, 71 N. E. 350 (land in another state cannot be taxed as personal property). *McCurdy v. McCurdy*, 197 Mass. 248, 83 N. E. 881. *In re Curtis*, 142 N. Y. 219. *In re Dows*, 167 N. Y. 227, 232, 60 N. E. 439, 52 L. R. A. 433, 88 Am. St. Rep. 508, affirming 60 N. Y. App. Div. 630 (affirmed *sub nomine*, *Orr v. Gilman*, 183 U. S. 278, 22 S. Ct. 213, 46 L. Ed. 196. *In re Sutton*, 3 N. Y. App. Div. 208, 38 N. Y. Suppl. 277, affirming 15 Misc. 659, 38 N. Y. Suppl. 102. *In re Berry*, 23 Misc. Rep. 230, 51 N. Y. Suppl. 1132, 2 Gibbons 346. *Contra*, *In re Wheeler*, 1 Misc. Rep. 450, 22 N. Y. Suppl. 1075.

<sup>4</sup>*In re Mills*, 177 N. Y. 562, 69 N. E. 1127, affirming 86 N. Y. App. Div. 555, 84 N. Y. Suppl. 1135. Under the New York statute of 1892, chapter 399, legacies to lineal descendants out of the proceeds of testator's real estate are exempt as real estate. *In re Cobb*, 14 Misc. Rep. 409, 71 N. Y. St. 506, 36 N. Y. Suppl. 448.

<sup>5</sup>*In re Stiger*, 7 Misc. Rep. 268, 28 N. Y. Suppl. 163. See further, *ante*, s. 170.

<sup>6</sup>*United States v. Watts*, 1 Bond 580, Fed. Cas. 16, 653.

## Sec. 187. The Pennsylvania Rule.

In Pennsylvania the rules of equitable conversion, through a direction in the will to sell or invest in real estate, transform the property for the purposes of the inheritance tax,<sup>1</sup> and mere insufficiency of personal property may work a conversion of the real estate by implication.<sup>2</sup> This doctrine results in subjecting to the Pennsylvania tax real estate of a resident situated outside the state,<sup>3</sup> unless the proceeds are to be invested outside the state,<sup>4</sup> and in exempting from tax real estate in Pennsylvania belonging to a non-resident decedent.<sup>5</sup> Even in Pennsylvania a conversion will not take place through a mere power to sell,<sup>6</sup> or where the conversion of real estate is postponed.<sup>7</sup>

<sup>1</sup>*In re Handley*, 181 Pa. St. 339, 37 A. 587, reversing judgment, 3 Lack. Leg. N. 9.

**Lien.** Where there is a conversion of land situated in Pennsylvania into personal property the lien of the tax should be transferred from the land to the fund which it produced. *In re Brown*, 5 Pa. Dist. R. 286.

<sup>2</sup>Where the Pennsylvania testator gave his executors full power to sell real estate if necessary for any purpose of his estate and it became necessary to sell to pay legacies, and sale was made, the real estate situated in other states should be charged with the collateral inheritance tax. The power to sell if necessary to make distribution became under the manifest intent of the testator a direction to sell. The pecuniary legacies are to be paid before the residue. The testator intended them to be paid in cash. He must therefore have foreseen the necessity

for the sale of his real estate, where the pecuniary legacies aggregate very much more than the amount of the personal estate. *In re Vanuxem*, 212 Pa. St. 315, 61 A. 876, 1 L. R. A. N. S. 400.

On the question of conversion of real estate where the trustees had a power only to sell, the argument that it was necessary to sell the lands to pay debts is not convincing where it did not appear that at the date of the will the decedent conceived such a necessity to exist. That the real estate in other states is not now of sufficient value to pay his debts, is by no means conclusive that he did not regard it as sufficient for that purpose, when he executed his will; and that therefore he intended that his Wisconsin lands should not be delivered to the beneficiaries as real estate. Besides, he owned several mining locations in Canada which he, like most men who invest in such property, regarded as of great value. *In re Dalrymple*, 215 Pa. St. 367, 374, 64 A. 554.

<sup>1</sup>*In re Dalrymple*, 215 Pa. St. 367, 374, 64 A. 554. *In re Williamson*, 153 Pa. St. 508, 521, 26 A. 246, 32 Wkly. Notes Cas. 93. *Miller v. Commonwealth*, 111 Pa. St. 321, 2 A. 492. *Williamson's Estate*, 153 Pa. St. 508.

**What Law Governs.** A note in 19 *Harvard Law Review*, pp. 201, 202, discusses conversion and suggests that the question as to whether a conversion has taken place must be determined by the law of the state where the land is situate since that state alone has dominion over the property. But if it is determined that there is a conversion succession will occur by the law of the decedent's domicile as in the case of other personalty.

<sup>4</sup>The will of a resident of Pennsylvania directed that real estate situated outside of Pennsylvania should be sold on the death of the wife who was made life tenant and the proceeds invested in mortgages in the state where the land lay. The direction to invest the proceeds out of the state prevents them from being brought within the state of Pennsylvania and there distributed; and therefore the fund never came within the jurisdiction of Pennsylvania and so is not subject to an inheritance tax. *In re Hale*, 161 Pa. St. 181, 183, 28 A. 1071.

<sup>5</sup>*In re Coleman*, 159 Pa. St. 231, 232, 28 A. 137. *In re Lamberton*, 40 Pa. Super. Ct. 548.

Where the testator domiciled in New York directed all his real estate to be sold, this rendered the real estate personal property, and gave it a situs at the place of his domicile; and therefore the fund realized from it was not subject to an inheritance tax in Pennsylvania, although the testator appointed executors in Pennsylvania as to all of his estate not situated in New York, and the Pennsylvania executors improperly paid the collateral tax on the real estate situated in Pennsylvania. *In re Shoenberger*, 221 Pa. St. 112, 118, 70 A. 579, 19 L. R. A. N. S. 290.

<sup>6</sup>*In re Dalrymple*, 215 Pa. St. 367, 374, 64 A. 554. *Appeal of Drayton*, 61 Pa. St. (11 P. F. Smith) 172. *In re Hale*, 161 Pa. St. 181 (till death of life tenant).

<sup>7</sup>*In re Handley*, 181 Pa. St. 339, 346, 37 A. 587, reversing judgment, 3 Lack. Leg. N. 9.

## Sec. 188. Manumission of Slave.

The manumission or bequest of freedom to a slave by the last will and testament confers on such slave the identical rights which would pass if the testator had bequeathed the same slave to



another person, and therefore the bequest of freedom is a legacy on which the executor is liable to pay a tax on the appraised value of the slave.<sup>1</sup> The court bases its decision on the theory that a large part of the personal property in the state consists of slaves, which should pay their share of the taxes.<sup>2</sup>

<sup>1</sup>*State v. Dorsey*, 6 Gill (Md.) 388.

<sup>2</sup>*Spencer v. Negro Dennis*, 8 Gill (Md.) 314.

## CHAPTER XXVI.

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### PLEDGE OR COLLATERAL.

- § 189. When Collateral Redeemed.**
- § 190. Stock Pledged with Brokers.**
- § 191. Stock Pledged by Non-Resident.**

#### **Sec. 189. When Collateral Redeemed.**

Where a resident of New York had pledged stock as collateral for a loan, and the executor paid the loan and redeemed the stock, the title to the stock has reverted to the estate of the pledgor and it is in a situation to be taxed as property of the estate.

*In re Hurcomb*, 36 Misc. Rep. 755, 74 N. Y. Suppl. 475.

#### **Sec. 190. Stock Pledged with Brokers.**

Where the stock was purchased by a stock broker for a customer with her own money, and they held the stock as collateral with other stock deposited with them, the court holds that the customer was merely the pledgee of the stock, the brokers being the owners of the property subject to a right to redeem upon paying the entire amount of the debt, and therefore the stock should not be included in the transfer of the estate of the customer. A subsequent sale of the stock by the brokers for the satisfaction of their lien extinguishes whatever right or title the decedent had, and demonstrated that instead of being the owner of the property the estate was indebted in a large sum to the brokers.

*In re Havemeyer*, 32 Misc. Rep. 416, 66 N. Y. Suppl. 722.

#### **Sec. 191. Stock Pledged by Non-Resident.**

The testator was a non-resident of New York and had a speculative stock account with brokers in the city of New York, and on the day of his death owed them large sums of money on stocks and bonds purchased by them for him with their own money. The court holds that the deceased was under contract with the brokers to apply certain pledged securities to the payment of the debt and the executrix performed that contract. The executrix argued

that having paid a portion of the debt with pledged non-taxable securities, which are not under the transfer law tax considered as "property" in this state, she has a right to treat such portion of the debt as still existing for the purpose of offsetting against it property otherwise taxable. But the court holds that the executrix cannot argue that the balance of the debt, after applying taxable property pledged which has actually been paid with non-taxable securities pledged for that purpose, should be carried as a debt to credit and offset against clearly taxable property. And while for the purposes of taxation non-taxable property is not to be treated as taxable property, yet it was part of the estate of the deceased which passed to the executrix, and she chose to cause its sale and application to the debt of the deceased; and therefore the balance of the taxable property in the state of New York consisting of real estate and personal property is subject to the tax.<sup>1</sup>

The testator, a resident of Illinois, at his death was the owner of bonds and stocks actually within the state of New York of corporations organized under the laws of New York state; and he also owned other personal property in New York, the aggregate value of all this property being about \$774,000. At the time of his death he was indebted to various persons in New York in the sum of something over \$800,000. That indebtedness was secured by a pledge of bonds actually located with the state worth \$20,000 and partly by a pledge of stock of various corporations incorporated under the laws of states other than the state of New York, the market value of such stocks being in excess of the amount of the whole indebtedness. The court holds that for the purposes of taxation the testator's personal estate in New York amounted to \$744,000, from which should be deducted the expenses of administration, executor's commissions and debts to the amount of \$58,000, that being the value of the bonds and of the stock of New York corporations pledged as collateral security to the creditors in the city of New York. It was claimed that inasmuch as the decedent at the time of his death was indebted to local creditors to an amount greater than the market value of the local assets, there was no property of the decedent within the state of New York subject to a transfer tax; and that all the local assets of the decedent were primarily liable for the payment of the indebtedness to local creditors to the entire extent of such property; and that the local assets to the amount of \$58,000 specifically pledged as collateral security for the payment of the indebtedness to local

creditors are liable to be entirely used for the purpose of such payment.

Where the whole estate is within the state of New York and the decedent is a resident of the state, undoubtedly debts are to be deducted from the value of the property, but in this case the indebtedness to the New York creditors is a general indebtedness against the whole estate. Here domestic creditors have in their hands legal title by a pledge and a right to resort for the payment of their debts to securities belonging to a non-resident decedent which are not taxable under the laws of this state; and therefore the indebtedness due such creditors is not to be offset against the value of the property of such decedent otherwise taxable under the transfer law of the state.<sup>3</sup>

<sup>1</sup> *In re Burden*, 47 Misc. 329, 95 N. Y. Suppl. 972.

<sup>2</sup> *In re Pullman*, 46 N. Y. App. Div. 574, 62 N. Y. Suppl. 395.

## CHAPTER XXVII.

### DOUBLE TAXATION.

- § 192. Disputed Domicile.
- § 193. Double Taxation at Domicile of Owner and at Situs of Property.
- § 194. Reciprocal Provisions.
- § 195. Lapsed Legacy.
- § 196. The Louisiana Rule.

#### Sec. 192. Disputed Domicile.

Where the proper state court administers the estate of a decedent as that of a resident, and its decree is by state law binding on all claimants against the estate, a final decree by such a court after payment of the tax is a bar to proceedings in the courts of another state on the theory that the decedent resided there.<sup>1</sup> But where the first decree does not purport to be binding on all claimants, it is perfectly possible that the courts of two states may each decide the decedent to be a resident of that state, in which case each state will assess on the whole property on that basis.<sup>2</sup>

<sup>1</sup> *Till v. Kelsey*, 207 U. S. 43, 28 S. Ct. 1, 52 L. Ed. 95.

<sup>2</sup> The fact that the California courts decided that a certain decedent was a resident of California and administered his estate and assessed a tax on that basis does not bar the New York courts. It is not *res judicata* as to them, as the California decree was by California law binding only on "heirs, legatees or devisees," and did not purport to adjudicate taxes. *In re Cummings*, 142 App. Div. 377, 127 N. Y. Suppl. 109, reversing 63 Misc. 621, 118 N. Y. Suppl. 684.

Where there is a question whether a married woman is domiciled within the state of New Jersey or of New York, the fact that the will was never probated in New Jersey, but the probate was taken out in New York, does not deprive the state of New Jersey of jurisdiction to levy an inheritance tax upon it. The authority of the surrogate does not depend upon the probate of the will, which speaks from the death of the testatrix. *In re Hartman*, 70 N. J. Eq. 664, 668, 62 A. 560.

Certain facts proving domicile are considered *ante*, s. 19, n. 3.

The extra-territorial effect of a judgment as to domicile is considered *ante*, s. 21.

#### Sec. 193. Double Taxation at Domicile of Owner and at Situs of Property.

Double taxation, both in the state where the property is situated and in the state of its owner's domicile, has been so often

approved by our highest courts that its validity can no longer be disputed,<sup>1</sup> whether or not the tax was in force before the property was placed in the foreign jurisdiction.<sup>2</sup>

<sup>1</sup>*Prothingham v. Shaw*, 175 Mass. 59, 61, 78 Am. St. Rep. 475. *In re Stanton*, 142 Mich. 491, 105 N. W. 1122, 12 Detroit Leg. N. 829. *Mann v. Carter*, 74 N. H. 345, 68 N. E. 130, relying on the following cases: *Hartman Case*, 70 N. J. Eq. 664, 667; *Hopkins Appeal*, 77 Conn. 644; *Bridgeport Trust Co.*, 77 Conn. 657; *Matter of Swift*, 137 N. Y. 77, 18 L. R. A. 709; *Matter of Houdayer*, 150 N. Y. 37, 34 L. R. A. 235, 55 Am. St. Rep. 642; *State v. Dalrymple*, 70 Md. 294, 3 L. R. A. 372; *Eidman v. Martinez*, 184 U. S. 578, 581. (But see *In re Joylin*, 76 Vt. 88.) *In re Lewis*, 203 Pa. St. 211, 217, 52 A. 215. *Blackstone v. Miller*, 188 U. S. 189, 23 S. Ct. 277, 47 L. Ed. 439, affirming 171 N. Y. 682, 69 N. Y. App. Div. 127 (not a deprivation of the privileges and immunities of a citizen of another state or a violation of the fourteenth amendment).

"The question presented is not one of general equities, but of jurisdiction. It has been held and logically that the taxing authorities must be controlled solely by the laws of the state, and not by proceedings in another and distinct jurisdiction, to ascertain whether or not a certain tax should be levied or collected. Payment in one state is not a defence when called upon to pay in the other unless so provided by law. *Mann v. State Treasurer*, 74 N. H. 345, 68 A. 130, 15 L. R. A. N. S. 150. *Blackstone v. Miller*, 188 U. S. 189, 206, 207, 23 Sup. Ct. 277, 47 L. Ed. 439." *Per Root, J.*, in *In re Douglas County*, 84 Neb. 506, 121 N. W. 593.

"The fact that two states, dealing each with its own law of succession, both of which the plaintiff in error has to invoke for her rights, have taxed the right which they respectively confer, gives no cause for complaint on constitutional grounds. The universal succession is taxed in one state, the singular succession is taxed in another. The plaintiff has to make out her right under both in order to get the money." *Per Holmes, J.*, in *Blackstone v. Miller*, 188 U. S. 189, 207, 23 S. Ct. 277, 47 L. Ed. 439, affirming 171 N. Y. 682, 69 N. Y. App. Div. 127.

Where the testator died living in New Hampshire and having savings bank deposits in Massachusetts, these deposits are subject to tax in New Hampshire although they were also subject to tax in Massachusetts. This is not double taxation, as the two burdens are created by two different independent states for wholly different local purposes. *Mann v. Carter*, 74 N. H. 345, 68 N. E. 130.

*Double taxation should be avoided in construction when possible. In re Enston*, 113 N. Y. 174, 182, 21 N. E. 87, 3 L. R. A. 464, 22 N. Y. St. 569, reversing 46 Hun 506, 19 Abb. N. Cas. 227, 10 N. Y. St. 380.

<sup>2</sup>The fact that the law imposing a tax was in force before the deposit was made by a non-resident in New York does not seem to be relied upon by the court. *Blackstone v. Miller*, 188 U. S. 189, 23 S. Ct. 277, 47 L. Ed. 439, affirming 171 N. Y. 682, 69 N. Y. App. Div. 127, relying upon *Magoun v. Illinois Trust & Savings Bank*, 170 U. S. 283.

## Sec. 194. Reciprocal Provisions.

The following states have reciprocal provisions for the inheritance tax paid in another state: West Virginia, statute of 1904,

chapter 6, sect. 6; Massachusetts statute 1907, chapter 563, sect. 3; Vermont Statute 1904, number 30, sect. 3. Connecticut tried a reciprocal provision, statute of 1903, chapter 63, but has now adopted a retaliatory arrangement, statute of 1907, chapter 179.<sup>1</sup>

This has been construed in Vermont to cover only what is actually paid to the foreign jurisdiction, after deducting the discount there allowed, and not to include the tax actually there assessed.<sup>2</sup>

<sup>1</sup> "The amendment passed in 1903 removed the bar erected by the original act, against the use of any of its provisions for imposing a transfer tax on personal property of non-residents. It proceeds to authorize such a transfer tax and to prescribe the machinery for its collection, coupling this, however, with instructions to the treasurer not to collect such transfer tax in any case where the decedent resided in a state which does not collect transfer or succession taxes from personal property therein 'belonging to the estates of Connecticut decedents.' The amendment recognizes the justice of the scheme adopted in the original act, and attempts its modification only so far as may be necessary to add to the force of example the influences of reciprocity." *Per* Hammersley, J., in *In re Gallup*, 76 Conn. 617, 627, 57 A. 699.

<sup>2</sup> *In re Meadon*, 81 Vt. 490, 70 A. 1064.

### Sec. 195. Lapsed Legacy.

Double taxation was enforced rigidly in the following English case: The father died leaving certain fees to his son; the son died leaving issue which survived the father and devising the property to trustees upon certain trusts.

The English wills act, section 33, provides that where property is devised to the child of the testator who dies in the testator's lifetime leaving an issue which survives the testator, such devise "shall not lapse but shall take effect as if the death of such person had happened immediately after the death of the testator."

The findings act provides that an estate duty shall be levied on all property passing at a person's death, of which the deceased was at the time of his death competent to dispose. The government collected an inheritance tax from the father's estate and the court further holds that the effect of the wills act was to pass the real estate to the child in fee to devolve as part of his property, and consequently that it was subject to a second inheritance tax from his executors.

*In re Scott* (Eng.), 83 L. T. 613.

### **Sec. 196. The Louisiana Rule.**

The Louisiana constitution forbids an inheritance tax when the property passing has borne its just proportion of taxes prior to the death of the decedent. This exempts an interest in a partnership which has paid the usual taxes,<sup>1</sup> but not stock in a corporation which has paid the tax.<sup>2</sup>

The contract of an insurance agent with his company provided that in case of his death his representative should be entitled to certain commissions on renewals. It was claimed that as the premiums had been taxed, therefore the inheritance tax should not be laid. The court holds, however, that the premiums do not form the subject-matter of the inheritance, but are due to and are paid to and belong to the company, and the heirs inherit simply an incorporeal right whose only relation to the premiums is that its amount is determined by a computation based on their net amount, and the contract does not invest the heirs with the ownership of the premiums or any part thereof, but only with the right to require of the insurance company payment of an amount of money measured by the net amount of the premiums, and the right thus inherited has never been assessed and has never borne taxes.<sup>3</sup>

It was argued that the tax should not be collected on bonds belonging to the estate, because in 1905 the decedent sold certain real estate on which the taxes had been paid and with the proceeds of the sale during the same year purchased bonds which she owned at the time of her death in January, 1906. It is not contended that any taxes have ever been paid on these bonds but it is argued that as the decedent had paid all taxes assessed against her real estate and with the proceeds of the sale purchased bonds, the latter must be construed in the light of property which has borne its just proportion of taxes. The court holds that there would be weight in this contention if the constitution had exempted persons who have paid all the taxes assessed against them, but as the law excepts property inherited it cannot construe the article so as to substitute persons for property. The question of the exemption of property from the tax can only arise after the opening of the succession by the death of the decedent, and the right of the heirs and of the fisc must be determined by the state of facts then existing. That other property formerly owned by the decedent may have borne its just proportion of taxes is a matter entirely foreign to the inquiry.<sup>4</sup>



<sup>1</sup>*Succession of Stauffer*, 119 La. Ann. 66, 43 S. 928.

<sup>2</sup>The taxation of corporate capital stock, franchises and property is not a taxation of the shares held by individual stockholders; and therefore these taxes are not exempt from the operation of the inheritance tax law of 1904. *Succession of Kohn*, 115 La. Ann. 71, 38 S. 898.

<sup>3</sup>*Succession of Fell*, 119 La. Ann. 1037, 44 S. 879.

<sup>4</sup>*Succession of Pritchard*, 118 La. Ann. 883, 43 S. 537.

## CHAPTER XXVIII.

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### ESTATES OF NON-RESIDENT DECEDENTS.

- § 197. Realty of Non-Resident. — Corporation Owning Property in State.
- § 198. Personalty of Non-Resident.
- § 199. Jurisdiction Based Solely on the Situs of Personal Property in the State.
- § 200. Domestic Stock Owned by Non-Resident.
- § 201. Non-Resident's Stock in Foreign Corporation.
- § 202. Where Beneficiary Alone is within the Jurisdiction.
- § 203. Removal of Property before Taxation.
- § 204. Marshaling Local Assets of Non-Resident.
- § 205. Federal Act of 1898. — Aliens.
- § 206. Effect of Place of Execution of Will.

#### Sec. 197. Realty of Non-Resident. — Corporation Owning Property in State.

The succession to real estate depending on the law of its situs, real estate of a non-resident may well be subject to an inheritance tax at its situs,<sup>1</sup> and not at the domicile of the decedent.<sup>2</sup>

<sup>1</sup>Some states, as appears in our table at p. 1285, are claiming an inheritance tax on stock of non-residents in corporations which are not even organized under their laws, but own property within the state. We know of no decisions supporting such a tax, and believe that the general principles of corporate taxation forbid it. It would seem to be involved in the reasoning of the court in a recent New York case, which discusses the distinction between a corporation and a joint stock association.<sup>3</sup> Such a tax might conceivably be justified under some such language as follows:—

“The attitude of a holder of shares of capital stock is quite other than that of a holder of bonds towards the corporation which issued them. While the bondholders are simply creditors, whose concern with the corporation is limited to the fulfillment of its particular obligation, the shareholders are persons who are interested in the operation of the corporate property and franchises, and their shares actually represent undivided interests in the corporate enterprise. The corporation has the legal title to

all the properties acquired and appurtenant, but it holds them for the pecuniary benefit of those persons who hold the capital stock. They appoint the persons to manage its affairs, they have the right to share in surplus earnings, and, after dissolution, they have the right to have the assets reduced to money and to have them ratably distributed. Each share represents a distinct interest in the whole of the corporate property."<sup>4</sup>

The same court has, however, recently distinctly denied the validity of such a tax.<sup>5</sup>

<sup>1</sup> *Appeal of Gallup*, 76 Conn. 617, 57 A. 699. *In re Vinot*, 7 N. Y. Suppl. 517. *Callahan v. Woodbridge*, 171 Mass. 595, 598. *Thomson v. Lord Advocate*, 12 Clark & Fennelly 1. *Contra, In re Stanton*, 142 Mich. 491, 105 N. W. 1122, 12 Detroit Leg. N. 829.

A note in 19 *Harvard Law Review*, p. 201, discusses the liability of foreign real estate to the collateral inheritance tax. The editor points out that the inheritance tax being a tax on a privilege in the case of personalty each state allows the property within its jurisdiction to pass by the law of the state of the decedent's domicile and therefore two states may each grant a privilege and may each levy a tax. But in the case of realty title passes by the *lex rei sitæ* and that state alone controls the privilege of succession.

<sup>2</sup> *Lorillard v. People*, 6 Dem. Surr. (N. Y.) 268. *Commonwealth v. Coleman*, 52 Pa. St. 468. *In re Bittinger*, 129 Pa. St. 338.

The heirs and legatees do not receive by inheritance under the laws of Louisiana real estate in another state. The legislature must be supposed to have measured the burden of the tax by the extent of the right and privilege which it has itself conferred and not upon that which has been conferred by the laws of another state. *Succession of Westfeldt*, 122 La. Ann. 836, 48 S. 281.

<sup>3</sup> *In re Jones*, 172 N. Y. 575, 65 N. E. 570, 60 L. R. A. 476, reversing 69 N. Y. App. Div. 237, 74 N. Y. Suppl. 702, reported more fully *ante*, s. 181.

<sup>4</sup> *Per Gray, J.*, in *In re Bronson*, 150 N. Y. 1, 8, 44 N. E. 707, 34 L. R. A. 238, 55 Am. St. Rep. 632, modifying 1 N. Y. App. Div. 546, 37 N. Y. Suppl. 476.

Stock was called an "interest" in corporate property in *In re Culver*, 145 Iowa 1, 123 N. W. 743.

<sup>5</sup> "The assessment of the stockholder is computed upon the value of his interest in the whole of the corporate property, as evidenced by the number of the shares of stock which he holds. Their market value may, or may not, represent, proportionately, the actual value of the corporate properties. Very often it does not and the market value of the shares of capital stock may be quite disproportionately influenced by considerations, or by circumstances, having little reference to actual conditions. That value, whatever it may be in the market, is the worth attached to an interest in the corporate assets and properties, regarded as a whole. A share of capital stock represents the distinct interest which its holder has in the corporation, and his right to participate in the distribution of the net earnings of the corporation, as a going concern, or in that of its assets, upon a dissolution, and is proportionate to the number of shares which he holds. They evidence the extent of his proprietary interest and their assessment for taxation purposes must be upon that interest, regarded as an entity,

and is unapportionable with reference to the situs of the corporate properties. The tax, imposed by the state upon the transfer of such property, upon the decease of its owner, is not upon the property which passes; it is upon the right of succession to it. The transfer tax act operates upon that general right to succeed to the interest of the deceased in the corporation, and it is inconceivable that the value of the interest, upon which the tax is computed, is determinable by the location of the corporate properties." *Per* Gray, J., in *In re Palmer*, 183 N. Y. 238, 241, 76 N. E. 16, affirming 102 N. Y. App. Div. 616, 92 N. Y. Suppl. 1137. (See further, *post*, s. 211.)

[Status of stock pledged by non-resident, see *ante*, s. 191.]

[Jurisdiction of probate courts over real estate of non-resident decedents, see *post*, s. 388.]

[Ancillary administration in case of non-residents, see *post*, s. 389.]

[Exercise by non-resident of power under will of resident, see *ante*, s. 20.]

[Application of tax acts to estates of non-residents, see *ante*, s. 19.]

## Sec. 198. Personalty of Non-Resident.

Personal property of a non-resident is subject to tax by the state where the property is situated,<sup>1</sup> except in Pennsylvania, which holds that securities of a non-resident, though physically within the state, are not subject to the inheritance tax.<sup>2</sup> This does not apply to tangible property within the state, which is subject to tax even in Pennsylvania.<sup>3</sup>

<sup>1</sup> *Callahan v. Woodbridge*, 171 Mass. 595, 597. *Greves v. Shaw*, 173 Mass. 205, 210. *Frothingham v. Shaw*, 175 Mass. 59, 78 Am. St. Rep. 475. *Neilson v. Russell*, 76 N. J. L. 655, 71 A. 286, reversing 76 N. J. L. 27, 69 A. 476. *Dixon v. Russell*, 79 N. J. L. 490, 76 A. 982, reversing 78 N. J. L. 296, 73 Atl. 51. *Tilford v. Dickinson*, (N. J., 1911,) 79 Atl. 1119, reversing 79 N. J. L. 302, 75 Atl. 574. *Albany v. Powell*, 2 Jones Eq. (N. C.) 51. *In re Romaine*, 127 N. Y. 80, 85, 27 N. E. 759, 12 L. R. A. 401, affirming 58 Hun 109 (the act of 1887 did not discriminate between testators and intestates). *In re Lord*, 186 N. Y. 549, 79 N. E. 1110, affirming 111 N. Y. App. Div. 152, 97 N. Y. Suppl. 553. *In re Vinot*, 7 N. Y. Suppl. 517. *Contra*, *Appeal of Gallup*, 76 Conn. 617, 57 A. 699, construing phrase, "property within the jurisdiction of this state"; an amendment, however, striking out the words "by the inheritance laws of this state" and inserting instead "by inheritance" allows such taxation.

The state has a right to tax personal estate of non-residents which exists in the state of New York. *In re Romaine*, 127 N. Y. 80, 86, 27 N. E. 759, 12 L. R. A. 401, affirming 58 Hun 109.

As to personal property within the state of New York belonging to non-resident decedents, succession is under the law of a foreign state and that succession cannot be taxed by New York. In such case the right of the state to impose a tax is based on its dominion over the property situated within its territory. This is a property tax on such property. *In re Embury*, 154 N. Y. 746, 49 N. E. 1096, affirming 19 N. Y. App. Div. 214, 45 N. Y. Suppl. 881.

The legal right of the legislature to tax the succession to "property of a non-resident owner rests upon the fact that the property is within the state

and subject to its jurisdiction. This power is as large in reference to the property of a non-resident decedent as in reference to that of the inhabitants of the commonwealth. It covers the property within the jurisdiction. A ground for its exercise is that the property has the protection of our laws and that our laws are invoked for the administration of it when a change of ownership is to be effected." *Per Knowlton, J., in Callahan v. Woodbridge*, 171 Mass. 595, 597.

N. Y. St. 1885 imposed a tax only on the property of resident decedents. *In re Hall*, 55 Hun 608, 8 N. Y. Suppl. 556, following *In re Enston*, 113 N. Y. 174, 21 N. E. 87.

"There are three plans which may be followed in subjecting the estate of a deceased person to a succession tax : (1) A tax based upon the distribution of the net proceeds of a decedent's property to the persons upon whom it devolves by force of the laws of the taxing state. This plan includes in the estate subject to the tax the net proceeds of a decedent's land situate in the taxing state, and in case the decedent was domiciled in the taxing state, but not otherwise, of all his personal property. (2) A tax based upon any transfer, actual or potential, of a decedent's personal property situate at his death within the taxing state, whether the net proceeds of that property pass to the decedent's beneficiaries by force of the laws of the taxing state or not. Under this plan the tax is more nearly akin to an ordinary transfer duty. (3) The inclusion in one act of a tax under each of these plans. There would seem to be no constitutional objection to the adoption of either plan. *Blackstone v. Miller*, 188 U. S. 189, 23 Sup. Ct. 277, 47 L. Ed. 439. Our succession tax is laid in pursuance of the first plan, and the act is framed in view of the existing law of domicile in relation to this subject." *Appeal of Gallup*, 76 Conn. 617, 621, 57 A. 699.

**The English Rule.** "We have no difficulty in distinguishing between this and the English cases. In those cases the several acts of parliament imposing probate, legacy and succession duties underwent construction. In England the question of probate duty depends upon the situs of the property and not the domicile of the owner. *Attorney General v. Hope*, 1 Crompt., Mes. & Ros. 530. It was for some time held that the legacy duty imposed by 36 Geo. III, ch. 52, and 48 Geo. III, ch. 149, depended upon the same consideration. *Attorney General v. Cockerill*, 1 Price 165. But these cases were overruled in *Thompson v. Advocate General*, 12 Clark & Finnelly 1, and the principle was settled that the law of the domicile of the owner of personal property determines its liability to legacy duty. The same rule was adopted in respect to the succession duty under 16 and 17 Vic., ch. 51. *Wallace v. Attorney General*, L. R., 1 Ch. App. C. 1. In the case last referred to, Lord Chancellor Cranworth said, 'Parliament has, no doubt, the power of taxing the succession of foreigners to their personal property in this country; but I can hardly think we ought to presume such an intention unless it is clearly stated.' Thus whilst the power of parliament to impose the tax without reference at all to the subject of domicile is distinctly recognized, it was held that the language of the acts did not furnish any indication of an intention to exercise that power, and that therefore the law of the domicile of the owner fixed the liability of his property to pay these taxes. In our opinion, for the reasons we have given, the Maryland statute cannot be so construed." *Per McSherry, J., in State v. Dalrymple*, 70 Md. 294, 304, 17 A. 82, 3 L. R. A. 372.

<sup>2</sup> *In re Schoenberger*, 221 Pa. St. 112, 119, 70 A. 579, 19 L. R. A. (N. S.) 290.

**Property in Hands of Agent.** Where the testator was not a resident of Pennsylvania and died in 1898, leaving property in Pennsylvania which had for a long while been in Pennsylvania in the hands of an agent for purposes of investment and reinvestment, this personal property is within the state of Pennsylvania, and where by agreement of the parties the property was distributed by an administrator appointed in Pennsylvania, the court holds that the Pennsylvania tax should be levied. *In re Lewis*, 203 Pa. St. 211, 214, 52 A. 205. *Singer v. Guarantee Trust & Safe Deposit Co.*, 24 Pa. Super. Ct. 270.

*In re Lewis*, 203 Pa. St. 211, was said not to be a convincing authority — one which was decided upon its own peculiar facts, and is not to be stretched, in *In re Schoenberger*, 221 Pa. St. 112, 119, 70 A. 579, 19 L. R. A. (N. S.) 290.

<sup>3</sup> *Small's Appeal*, 151 Pa. St. 1.

### Sec. 199. Jurisdiction Based Solely on the Situs of Personal Property in the State.

Jurisdiction for the purpose of the inheritance tax will not arise usually simply on account of the location in the state of intangible property,<sup>1</sup> such as stock<sup>2</sup> and bonds,<sup>3</sup> although this result has been reached under some statutes which have been construed as taxes on property.<sup>4</sup>

"The tendency of modern legislation in this country is to extend the state's taxing power to all property within its jurisdiction, and this is especially true as to inheritance taxes on the right of succession to all property, whether real or personal, tangible or intangible, which passes, testate or intestate, from decedents to other persons.

The ancient maxim that movables follow the domicile of the person was an outgrowth of conditions which have long since ceased to exist, and the rule has been greatly limited in certain matters, such as taxation and the subjecting of personal property of non-residents to the claims of local creditors."<sup>5</sup> So the tax has been imposed on personal property of non-residents left in the state,<sup>6</sup> such as bonds<sup>7</sup> and stock, which are often regarded as tangible assets,<sup>8</sup> deposits in banks,<sup>9</sup> or money left for investment with stockbrokers,<sup>10</sup> or other securities kept in the state for safety.<sup>11</sup> Even this doctrine may not apply to property casually brought into the state for a temporary purpose.<sup>12</sup>

<sup>1</sup> *In re Enston*, 113 N. Y. 174, 178, 21 N. E. 87, 3 L. R. A. 464, 22 N. Y. St. 569, reversing 46 Hun 506, 19 Abb. N. Cas. 227, 10 N. Y. St. 380, 5 Dem. Surr. 93, 8 N. Y. St. 781. *Thomson v. Advocate General*, 12 Clark & Finnelly 1.

<sup>2</sup> *People v. Griffith*, 245 Ill. 532, 543, 92 N. E. 313. *In re Stanton*, 142 Mich. 491, 494, 105 N. W. 1122, 12 Detroit Leg. N. 829.

Stock in foreign corporations belonging to a non-resident is not taxable in New York simply because the certificates were in the state of New York at the

date of the death of the testator. The stock of foreign corporations which formed part of this estate were not property in the legal sense. The share certificates which the testator held represented interests which he possessed in the corporations which issued them and the legal situs of that species of personal property is where the corporation exists or where the shareholder has his domicile. *In re James*, 144 N. Y. 6, 12, 38 N. E. 961, affirming 77 Hun 211, 27 N. Y. Suppl. 288, 6 Misc. 206.

"The corporate stocks of the decedent were not, under the general laws of this state, taxable here, although the share certificates may have been held here by her agents. The certificates are in no general sense property. They simply represent interests in the corporations, and the situs of the property owned by a shareholder in a corporation is either where the corporation exists or at the domicile of the shareholder; it can in no proper sense be said to be where the certificates happen to be in the hands of an agent in a state where the corporation has no existence and the owner no domicile. So, too, the bonds of foreign corporations in the hands of the agents of the decedent here were not, in a legal sense, property within this state, and they were not, under the general laws or the policy of the state, taxable here. On the contrary, they were, by the general policy of the state, exempted from taxation here. There is nothing in the act of 1885 from which it can be inferred that the legislature meant so far to depart from its general system and policy of taxation as to impose here a succession tax upon property thus situated. It was dealing with taxation upon the property of persons domiciled here, and used language sufficient to impose taxation upon such property, but not upon property of non-residents which had no situs in this state. It cannot be presumed that it was the intention of the legislature to impose taxation upon all the property of any decedent found within this state. Suppose a foreigner should come here with negotiable securities in his possession for the purpose of buying property here, and soon after should die here. Or suppose a merchant should come here from some other state with negotiable drafts or securities in his possession and should die here shortly after reaching this state; can it be supposed in either of such cases that it was the legislative intent that before the property of the decedent could be taken out of this state to the jurisdiction of his domicile it should be subjected to a tax to enhance the revenues of the state? Then, again, if this act is to be so construed as to reach personal estate of non-resident decedents, how is it to be administered? There are no means of ascertaining here how much of the estate will pass to collateral relatives under a will or by intestacy. That can only be known after the entire expenses of administration and the debts and liabilities of the deceased have been ascertained and deducted at the place of his domicile. Suppose a non-resident dies, leaving \$1,000,000 in this state, and is largely indebted at the place of his domicile, what his net estate will be after deducting debts and expenses of administration can only be ascertained at his domicile, where his estate must be finally administered, and adjusted, and there can be no way of adjusting the estate here, as there is no machinery in the law here appropriate to such a purpose; and thus it would be impractical to administer this statute." *Per Andrews, J.*, in *In re Enston*, 113 N. Y. 174, 181, 21 N. E. 87, 3 L. R. A. 464, 22 N. Y. St. 569, reversing 46 Hun 506, 19 Abb. N. Cas. 227, 10 N. Y. St. 380, 5 Dem. Surr. 93, 8 N. Y. St. 781.

<sup>3</sup> *People v. Griffith*, 245 Ill. 532, 543, 92 N. E. 313. *In re Gibbes*, 176 N. Y. 565, 68 N. E. 1117, affirming 84 N. Y. App. Div. 510, 83 N. Y. Suppl. 53, reversing 83 N. Y. Suppl. 56.

**Rights to Unsigned Bonds.** The decedent died in 1905, a resident of Alabama. He was a stockholder in a certain foreign consolidated coal company. The decedent was the president of the consolidated company, which executed a deed of trust to a New York trust company, conveying their property to secure a bond issue. The decedent as president of the consolidated company commenced to sign these bonds in Alabama, but they were never all signed by him before his death. The decedent was entitled to some of these bonds, but he never received any certificate from the New York trust company or any one else that he was entitled to them, although such a certificate was delivered to his executrix after his death. The direction of the vice-president of the consolidated company to the New York trust company to deliver to the decedent five hundred thousand of the bonds of the consolidated company, directing that such bonds be deposited with the trust company for safe keeping in his name, and the receipt therefor sent to the consolidated company at Alabama, cannot be considered as a legal disposition of the bonds which belonged to the coal company, so that they thereby became the property of the decedent. If the decedent received these bonds it would be as president of the coal company. This right to receive these bonds of the foreign corporation which were never executed and which the decedent, a non-resident, was entitled to receive because he was a stockholder of another foreign corporation, was not property within this state and was not subject to taxation. *In re Hillman*, 116 N. Y. App. Div. 186, 101 N. Y. Suppl. 640.

<sup>4</sup> The statute is laid on the amount of the estate being within the commonwealth and the domicile has nothing to do with the question, so the tax should be collected where one domiciled in France bequeathed a legacy to a citizen of France out of personal property situated in Pennsylvania. *Commonwealth v. Smith*, 5 Pa. St. (5 Barr.) 142.

<sup>5</sup> *People v. Griffith*, 245 Ill. 532, 92 N. E. 313.

<sup>6</sup> *People v. Griffith*, 245 Ill. 532, 543, 92 N. E. 313. *In re James*, 144 N. Y. 6, 10, 38 N. E. 961, affirming 77 Hun 211, 27 N. Y. Suppl. 288, 6 Misc. 206, *In re Gibbes*, 176 N. Y. 565, 68 N. E. 1117, affirming 84 N. Y. App. Div. 510, 83 N. Y. Suppl. 53, reversing 83 N. Y. Suppl. 56. *Albany v. Powell* (1854), 55 N. C. 51 (explained in *State v. Brinn*, 57 N. C. 300). See *In re Bronson*, 150 N. Y. 1, 4, 44 N. E. 707, 34 L. R. A. 238, 55 Am. St. Rep. 632, modifying 1 N. Y. App. Div. 546, 37 N. Y. Suppl. 476.

<sup>7</sup> *Callahan v. Woodbridge*, 171 Mass. 595, 598. *In re Whiting*, 150 N. Y. 27, 29, 44 N. E. 715, 34 L. R. A. 232, 55 Am. St. Rep. 640, modifying 2 N. Y. App. Div. 590, 38 N. Y. Suppl. 131. *In re Merriam*, 141 N. Y. 479, 36 N. E. 505, affirmed in *United States v. Perkins*, 163 U. S. 625, 16 Sup. Ct. 1073, 41 L. Ed. 287.

<sup>8</sup> *In re Merriam*, 141 N. Y. 479, 485, affirmed in *United States v. Perkins*, 163 U. S. 625. *In re Whiting*, 150 N. Y. 27, 29, 44 N. E. 715, 34 L. R. A. 232, 55 Am. St. Rep. 640, modifying 2 N. Y. App. Div. 590, 38 N. Y. Suppl. 131. *Commonwealth v. Smith*, 5 Pa. St. 142. See, however, the New York act of 1911 defining tangible assets.

<sup>9</sup> *In re Romaine*, 127 N. Y. 80, 88, 27 N. E. 759, 12 L. R. A. 401, affirming 58 Hun 109. The court remarks that "no one doubts that succession to a



tangible chattel may be taxed wherever the property is found and none the less that the law of the situs accepts its rules of succession from the law of the domicile, or that by the law of the domicile the chattel is part of a *universitas* and is taken into account again in the succession tax there." The court holds that there is no distinction for the purposes of taxation between the power to tax chattels of a non-resident within the state and his rights in a deposit in a trust company within the state. *Blackstone v. Miller*, 188 U. S. 189, 204, 23 S. Ct. 277, 47 L. Ed. 439, affirming 171 N. Y. 682, 69 N. Y. App. Div. 127. *In re Myers Estate*, 129 N. Y. Suppl. 194.

<sup>10</sup> *In re Daly*, 100 N. Y. App. Div. 373, 91 N. Y. Suppl. 858, reversing 37 Misc. 724, 76 N. Y. Suppl. 507.

**In Hands of Agent.** The court does not determine whether a non-resident creditor by placing intangible property in the hands of an agent within this state for management and control for business purposes may fix its situs for taxation. *Gilbertson v. Oliver*, 129 Iowa 568, 105 N. W. 1002, 4 L. R. A. N.S. 953.

<sup>11</sup> *In re Tiffany's Estate*, 128 N. Y. S. 106, 143 App. Div. 327, affirmed 95 N. E. 1140. "Where, however, the money of a non-resident is invested in this state as it was by Mr. Romaine in the bond and mortgage in question, and in the deposits made by him in the savings banks, or where the property of a non-resident is habitually kept, even for safety, in this state, we think that the statute applies both in the letter and spirit. Such property is within this state in every reasonable sense, receives the protection of its laws and has every advantage from government, for the support of which taxes are laid, that it would have if it belonged to a resident." *Per Vann, J.*, in *In re Romaine*, 127 N. Y. 80, 88, 27 N. E. 759, 12 L. R. A. 401, affirming 58 Hun 109. See *In re Tulane*, 51 Hun 213, 4 N. Y. Suppl. 36 (securities deposited with safe deposit company not taxable under the act of 1885).

<sup>12</sup> *In re Enston*, 113 N. Y. 174, 181, 21 N. E. 87, 3 L. R. A. 464, 22 N. Y. St. 9. *In re Phipps*, 143 N. Y. 641, 37 N. E. 823, affirming 77 Hun 325, 28 N. Y. Suppl. 330.

"We should hesitate before applying the statute to any property casually brought into the state for a temporary purpose, as by a visitor or traveler. It might well be held that such property, although literally 'within this state,' was not here in the sense meant by the statute, on account of the transitory and accidental character of its presence and the immediate custody of the owner." (Citing *Herron, Treasurer, v. Keeran*, 59 Ind. 472, 476.) *In re Romaine*, 127 N. Y. 80, 88, 27 N. E. 759, 12 L. R. A. 401, affirming 58 Hun 109.

[Location of assets in state insufficient where decedent died before passage of statute, see *ante*, s. 81.]

## Sec. 200. Domestic Stock Owned by Non-Resident.

The tax is imposed commonly on a non-resident owner of stock in a domestic corporation,<sup>1</sup> or in national banks located in the state,<sup>2</sup> or local state stock,<sup>3</sup> although the certificates are actually outside the state,<sup>4</sup> and although actually transferred in the foreign jurisdiction before the tax is collected.<sup>5</sup>

<sup>1</sup> *People v. Griffith*, 245 Ill. 532, 543, 92 N. E. 313. *Greves v. Shaw*, 173 Mass. 205. *In re Douglas County*, 84 Neb. 506, 121 N. W. 593 (stock held in trust for

resident by non-resident trustee). *In re Bushnell*, 172 N. Y. 649, 65 N. E. 1115, affirming 73 N. Y. App. Div. 325, 77 N. Y. Suppl. 4 (life tenant and remainderman). *In re Palmer*, 183 N. Y. 238, 240, 76 N. E. 16, affirming 102 N. Y. App. Div. 616, 92 N. Y. Suppl. 1137. *In re Leavitt*, 4 N. Y. Suppl. 179.

**Reason for Rule.** Corporate shares must be regarded as property within the broad meaning of that term, hence it cannot be said, if the property represented by a share of stock has its legal situs either where the corporation exists, or at the holder's domicile, that the state is without jurisdiction over it for taxation purposes. Therefore, stock held by a non-resident in a New York corporation is subject to tax under N. Y. St. 1892. *In re Bronson*, 150 N. Y. 1, 44 N. E. 707, 34 L. R. A. 238, 55 Am. St. Rep. 632, modifying 1 N. Y. App. Div. 546, 37 N. Y. Suppl. 476.

**A share of stock in a corporation may be defined as a right which its owner has in the management, profits and ultimate assets of the corporation.** The shares of stock represent interests in the earnings or the property of the corporation and a certificate is not stock itself, but only a convenient representation of it, though one may be a stockholder without having a certificate issued to him. The court finds that the decedent owned an "interest" in the property of the bank within the meaning of the inheritance statute and that such interest is property within the jurisdiction of the state. *In re Culver*, 145 Iowa 1, 123 N. W. 743, citing, *inter alia*, *Faxton v. McCosh*, 12 Iowa 527.

**The New Jersey Rule.** A legacy in an English estate of stock in a New Jersey corporation is not taxable by the New Jersey statute, even if the court disregards the technical force of the words "inheritance, distribution, bequest and devise," and looks at the tax as a succession tax. The tax cannot be sustained as a property tax. The ground upon which it can be sustained is that the rights of testamentary disposition and of succession are creatures of law, and the court thinks that it follows logically that the only law which can impose the terms is the law that creates the right. In this case it is the English law. The title to the stock passed by virtue of the will to the executors from the moment of the testator's death and the probate was operative only as the authenticated evidence, not as the foundation of the executors' title. The English executors were authorized without probate in this state to transfer the stock.

The court remarks that the New Jersey administration is ancillary only and the provisions of the statute authorizing the executors to collect the tax from the legatee or to take it from the legacy cannot be enforced; and after administration here the balance of the estate would probably be transferred to the English executors for distribution in accordance with the laws of the domicile of the testator. *Neilson v. Russell*, 76 N. J. L. 655, 71 A. 286, reversing 76 N. J. L. 27, 69 A. 476. *Astor v. State*, 75 N. J. Eq. 303, 72 A. 78.

<sup>2</sup>*Greves v. Shaw*, 173 Mass. 205. *In re Cushing*, 40 Misc. Rep. 505, 82 N. Y. Suppl. 795. See *In re Culver*, 145 Iowa 1, 123 N. W. 743.

National bank stock is taxable at the place where the bank is located irrespective of the domicile of the owner of the shares; but this decision is based on the national banking act which expressly so provides. *Tappan v. Bank*, 86 U. S. (19 Wall.) 490, 22 L. Ed. 189.

<sup>3</sup>*In re Alexander* (1845), 3 Clark 87 (county stock and Pennsylvania state stock owned by an Englishman).

<sup>4</sup>*Greves v. Shaw*, 173 Mass. 205, 208.

*In re Fitch*, 160 N. Y. 87, 43 N. E. 701, affirming 39 N. Y. App. Div. 609.

The provisions of the statute are absolute and the statute assumes that the property will be administered by an executor or administrator appointed in Massachusetts. It could not be supposed that the question whether the tax should be levied or not should depend on the ability or inability of the foreign executor to obtain possession of it without a suit. *Greve v. Shaw*, 173 Mass. 205, 209.

### **Sec. 201. Non-Resident's Stock in Foreign Corporation.**

Stocks in foreign corporations owned by a non-resident decedent are not subject to transfer tax.

*In re Bishop*, 82 N. Y. App. Div. 112, 81 N. Y. Suppl. 474, reversing 40 Misc. 64, 81 N. Y. Suppl. 252. *Matter of James*, 144 N. Y. 6, 38 N. E. 961. See *Matter of Enston*, 113 N. Y. 174, 21 N. E. 87, 3 L. R. A. 464. *Dunham v. City Trust Co.*, 115 N. Y. App. Div. 584, 101 N. Y. Suppl. 87 (although the transfer agent is a New York corporation).

### **Sec. 202. Where Beneficiary Alone is within the Jurisdiction.**

The mere fact that the beneficiaries are residents within the jurisdiction is not enough on which to predicate jurisdiction to assess the tax where neither the decedent nor the property are situated within the state.

*State v. Brim*, 57 N. C. 300. *State v. Brevard*, 62 N. C. 141.

Where the testator died domiciled in Cuba, leaving legacies of property in Cuba to residents of Pennsylvania, no inheritance tax in Pennsylvania can be collected. *In re Hood*, 21 Pa. St. (9 Harris) 106. *In re Bittinger*, 129 Pa. St. 338, 345, 18 A. 132, (land outside state).

**An inheritance tax is not upon the property itself** but upon the right to succeed to the property; the succession to the ownership of the property being by permission of the state the state can impose conditions regarding such privilege or commission. The courts therefore have upheld the imposition of the inheritance tax whenever the state had jurisdiction of the beneficiary or the subject matter regardless of the actual location of the personal property or the domicile of the decedent. *People v. Griffith*, 245 Ill. 532, 92 N. E. 313.

### **Sec. 203. Removal of Property before Taxation.**

In states which impose no penalty on foreign executors or administrators for failure to pay the tax and prescribe no lien, there is grave doubt as to the ability of the state to collect the tax from a non-resident executor or administrator provided he can get the stock transferred before the state takes any action. As a practical matter the state authorities are not likely to know of the death

of a non-resident stockholder, and it would seem easy in these states to have the stock quietly transferred. For example, in Michigan, stock of Calumet & Hecla and Iosceola Mining Company can be transferred without any reference to the state authorities.

While the New York statute of 1887 was in effect the testator, a non-resident, died leaving deposits and stocks on deposit in New York. The executors promptly withdrew it and the court holds that the tax cannot subsequently be collected under the laws of 1892, as there was then no property of the estate in New York and the tax cannot be legally imposed unless the statute in addition to creating a tax provided for an officer or tribunal who shall impose it and assess the property on notice to the owner. *In re Embury*, 154 N. Y. 746, 49 N. E. 1096, affirming 19 N. Y. App. Div. 214, 45 N. Y. Suppl. 881.

See *ante*, ss. 161, 162.

### Sec. 204. Marshaling Local Assets of Non-Resident.

The representative of a non-resident decedent may often avoid a tax by paying local debts with local assets,<sup>1</sup> unless the local debts are secured by a pledge of other assets,<sup>2</sup> or by using local assets to pay beneficiaries who are not subject to tax under local law.<sup>3</sup> But where the administrator of the foreign intestate elects to appropriate all the assets situated within the state of New York in payment of the distributive share of the intestate's brother, the court holds that this action cannot prevent the imposition of an inheritance tax in the state of New York. The court distinguishes the case of *In re James*, 144 N. Y. 6, as in that case the property was appropriated to the specific legacies, and it was property which was in Great Britain and never came within the jurisdiction of New York. The persons entitled to the legacies could have compelled their payment out of the English fund without resort to the New York courts. In the case at hand the situation is radically different. Upon the intestate's death his estate passed *eo instanti* to the persons who, by virtue of the intestate law, were entitled thereto.

The New York statute involves a tax upon transfers based upon the portion of the estate found within our jurisdiction, but this is not a tax upon the specific property which passes. The right of the state to the tax is therefore coincident with the devolution of title or interest; and the right of the state to exact the tax, as well as the obligation of the transferee to pay it, depend not upon a formal, complete and immediate change of title or possession, but upon the instant right to a beneficial share or interest subject only to the due administration of the estate.

"When a specific foreign legatee of a foreign testator can obtain satisfaction of his legacy in a foreign jurisdiction, the executor cannot be compelled to pay such a legacy out of the assets within our jurisdiction. This is the necessary result of the practical and obvious distinction between testacy and intestacy as applied to this subject of taxation. If a specific legatee needs not the intervention of our laws or courts to obtain what comes to him under a foreign will through foreign assets in a foreign jurisdiction, our laws cannot coerce an executor into paying his legacy out of funds within our jurisdiction for the sole purpose of exacting a tax. But in a case of intestacy the rule is essentially different, because the distributee takes an undivided interest in the whole estate; and if part of it happens to be within our jurisdiction, he can only get his share of what is here under our laws and through our courts. This is the theory upon which the nephews and nieces of the intestate in the case at bar are clearly taxable under our statute."<sup>4</sup>

The same result was reached in a case of testacy in a recent New Jersey case.<sup>5</sup> Where no such election is made, the local tax must be estimated by treating the local assets as chargeable with a proportionate share of taxable legacies in the proportion that local property bears to the whole estate.<sup>6</sup>

Under the Massachusetts statute the court holds that the executors cannot use stock in Massachusetts corporations for the payment of debts or legacies to the exemption of the property in New Hampshire and so relieve it from liability to a tax imposed by Massachusetts law. The rights of all parties, including the rights of the commonwealth to its tax, vest at the death of the testator. The executors "cannot by independent action, in attempting to marshal assets according to their personal wishes, enlarge or diminish the rights of legatees or of the commonwealth. . . . The debts, the legacies in Massachusetts exempt from taxation and the expenses of administration are chargeable upon the general assets, as well those in New Hampshire as those in Massachusetts, and only a proportional part of the property in Massachusetts should be used in paying them. The balance is subject to the payment of a tax under the statute."<sup>7</sup>

In a recent Washington case the testator was a resident of Maine and died there, leaving property both in Maine and in Washington. The Maine court ordered distribution of the estate of the testator within the state of Maine to collateral heirs and

strangers in full, and this was done, leaving the entire estate in Washington to pass to lineals.

The Washington court holds that it must presume that the authority of the Maine court was rightfully exercised and cannot hold the executor here or other legatees responsible for the errors of that court. The fact that the same persons acted as executors in both states, and that the executors were beneficiaries under the will, can make no difference.

The Washington court has no right or power to review the judgment of the court of Maine. The executor in Washington had no opportunity to collect the inheritance tax from the collateral heirs and strangers to the blood, and this court will not compel him to pay such tax out of his own funds or out of the funds belonging to other heirs or legatees.<sup>8</sup>

<sup>1</sup> *Memphis Trust Co. v. Speed*, 114 Tenn. 677, 88 S. W. 321.

The decedent was a resident of the state of Illinois, and was a member of the partnership doing business in New York and in Chicago. The New York branch was mainly occupied with manufacturing and the Chicago branch in selling, and therefore the debts owing to the New York creditors exceeded the value of the New York assets; but that the firm did not owe the persons from whom it purchased the goods is immaterial, as it did owe for discounts and loans effected, the proceeds of which were applied towards the purchase price of the property. Therefore, as debts in New York exhausted the value of the property here no tax could be imposed. *In re King*, 172 N. Y. 616, 64 N. E. 1122, affirming 71 N. Y. App. Div. 581, 76 N. Y. Suppl. 220.

<sup>2</sup> Where the whole estate is within the state of New York and the decedent is a resident of the state, undoubtedly debts are to be deducted from the value of the property, as the indebtedness to the New York creditors is a general indebtedness against the whole estate. But in this case domestic creditors have in their hands legal title by a pledge and a right to resort for the payment of their debts to securities belonging to a non-resident decedent which are not taxable under the laws of this state; and therefore the indebtedness due such creditors is not to be offset against the value of the property of such decedent otherwise taxable under the transfer law of the state. *In re Pullman*, 46 N. Y. App. Div. 574, 62 N. Y. Suppl. 395. See further, *ante*, s. 191.

<sup>3</sup> *In re James*, 144 N. Y. 6, 11, 38 N. E. 961, affirming 77 Hun 211, 27 N. Y. Suppl. 238, 6 Misc. 206. *In re Whiting*, 69 Misc. 526, 127 N. Y. Suppl. 960, 139 App. Div. 905, 124 N. Y. Suppl. 1134. See, however, the Act of 1911.

The decedent was a resident of New Jersey, leaving personal property in New York and also in New Jersey. The executor paid taxable legacies out of the New Jersey assets and distributed the New York assets among people of the one per cent class who were not taxable at all, because the New York assets are less than ten thousand dollars in amount. The court holds that it was the legal right of the executor to elect to pay the taxable legacies out of the New Jersey assets and to distribute the New York assets to persons who under our law are exempt from any tax whatever. "It was his plain duty to exercise this right in the

interests of parties claiming under the will as legatees; and he owed no duty to the state of New York to do anything different. He had this right of election until he had actually appropriated the New York assets to the payment of debts and legacies. There was no warrant of law to justify the appraiser in assuming that the taxable legacies would be paid *pro rata* out of both funds. The natural inference was that the assets would be marshaled in such a way as to require the smallest payment of tax, and, if the intent of the executor was material to produce a different result, the burden of proving the fact rested upon the state, and the executor should have been questioned upon the subject by the appraiser before the report was made." *Per* Thomas, S., in *In re McEwan*, 51 Misc. 455, 101 N. Y. Suppl. 733.

The property of which an English testator died possessed in Great Britain is largely in excess of the amount given by him in legacies and some portion of these legacies has already been paid from the English estate, and the executor has declared his determination of appropriating that part of the testator's property to their payment so that the American estate shall constitute the residuary estate disposed of by the will in favor of the testator's brothers. "This he may rightly do and thus save the estate from the payment of the succession tax imposed by our laws. The fact of such an appropriation will, of course, appear upon his accounting. If the executor determines to pay the legacies from the English estate, the American estate is thereby freed from the burden of the special tax, the imposition of which depends upon the fact of a succession by the legatee to some property which is within the state. If the American estate is appropriated to persons who are within the excepted degrees of relationship to the testator, the right to claim the tax from the executor is gone. It does not lie with the officers of the state to say, in such a case, which part of the testator's property shall be appropriated to the payment of the legacies. The law is not arbitrary in its application. It is simply absolute in its requirements, when the precise case arises which it was framed to meet; and where, as here, the case is not presented of an appropriation of any part of the American estate in payment of the legacies to the foreign legatees, this special tax law cannot and should not apply. To this view we are all the more disposed because to hold otherwise might be to subject this estate to taxation both in Great Britain and in this state. Such a result of a double taxation is one which the courts should incline to avoid, whenever it is possible, within reason, to do so." *Per* Gray, J., in *In re James*, 144 N. Y. 6, 11, 38 N. E. 961, affirming 77 Hun 211, 27 N. Y. Suppl. 288, 6 Misc. 206.

Under the statute of 1908, chapter 310, the executors have no right to marshal assets by electing to appropriate New York assets to the payment of legacies exempt or taxable at the minimum rate, leaving the payment of legacies at a higher rate from assets outside the state. The executor claimed that when he selected the securities in New York to pay the two legacies in question such securities became in effect as much "specifically bequeathed" as if named directly in the will. But the court holds that the will fixed the character of the legacies as general legacies and that the act of the executor could not change this character. *In re Porter*, 67 Misc. 19, 124 N. Y. Suppl. 676.

The testator died living in Missouri and owning stock in a Tennessee corporation and the will gave the testator's wife one-half of the residue. The widow elected under this provision of the will to take the stock in the Tennessee corporation and the court holds that the executor had a right upon the election

of the widow to transfer to her the stock in the Tennessee corporation in payment of her one-half interest, provided, of course, it was taken at a fair valuation as compared with the balance of the residuary estate wherever situated. It was argued that under this residuary clause which in terms did not confer any right of election the wife had no right to make a selection of specific property left in the residuary estate. The court relies upon the *Matter of James*, 144 N. Y. 6, 38 N. E. 961, where the whole matter was discussed. *Memphis Trust Co. v. Speed*, 114 Tenn. 677, 88 S. W. 321.

<sup>4</sup> *Per* Werner, J., in *In re Ramsdill*, 190 N. Y. 492, 496, 83 N. E. 584, reversing 119 N. Y. App. Div. 890.

<sup>5</sup> *Tilford v. Dickinson*, 79 N. J. L. 302, 75 A. 574, reversed on another point in (N. J. 1911,) 79 A. 1119.

<sup>6</sup> *In re McEwan*, 51 Misc. Rep. 455, 101 N. Y. Suppl. 733. *Wieting v. Morrow*, (Iowa, 1911,) 132 N. W. 193.

<sup>7</sup> *Per* Knowlton, C. J., in *Kingsbury v. Chapin*, 196 Mass. 533, 82 N. E. 700.

<sup>8</sup> *In re Clark*, 37 Wash. 671, 80 P. 267.

[See further, *post*, s. 354.]

## Sec. 205. Federal Act of 1898.—Aliens.

The federal act of 1898 does not apply to intangible personal property of a non-resident alien who never had a domicile in the United States and died abroad, such personal property being within the United States and having passed to his son, also an alien domiciled abroad, as sole legatee and next of kin of the deceased, partly under a will executed abroad and partly under the intestate laws of Spain. There is no question of the power of the legislature to tax the personal property of non-residents, but the question is of its intent to do so by the particular act in question. As the property in this case did not pass under any will executed in any state or territory of the United States, or by the intestate laws of any such state or territory, the case is not within the literal words of the act unless the word "state" is used in a sense broad enough to include a foreign state or territory.

The court finds that the English cases reach the conclusion that under the general act imposing a duty upon legacies, the law of the domicile of the testator controls. If he be domiciled abroad, whether an alien or a British subject, his legacies are exempt whether the property be in England at the time of his death or be subsequently sent there by his executors for local administration and distribution.

The words in the act of 1898, confining the application of the act to property passing "either by will or by the intestate laws of



any state or territory," limits its effect to wills executed in "any state or territory" under which property passes.

*Eidman v. Martinez*, 184 U. S. 578, 590, 22 S. Ct. 515, 46 L. Ed. 697, relying upon *United States v. Hunnewell*, 13 Fed. 617. *Moore v. Ruckgaber*, 184 U. S. 593, 22 S. Ct. 521, 46 L. Ed. 705, affirming 104 Fed. 947, 31 Civ. Proc. 310 (although will was executed in this country).

### **Sec. 206. Effect of Place of Execution of Will.**

Property situated in this country belonging to a non-resident decedent is not subject to the federal inheritance tax of 1898, although the will was executed in New York in 1890, during a temporary sojourn there.

*Moore v. Ruckgaber*, 184 U. S. 593, 22 S. Ct. 521, 46 L. Ed. 705, affirming 104 Fed. 947, 31 Civ. Proc. 310. The court relies upon *United States v. Hunnewell*, 13 Fed. Rep. 617.

## CHAPTER XXIX.

### PROPERTY BEYOND THE JURISDICTION.

- § 207. Foreign Personal Estate of Resident.
- § 208. Foreign Real Estate of Resident.
- § 209. Resident Owner of Stock in Foreign Corporation.
- § 210. Non-Resident Trustee Holding Property for Resident.
- § 211. Property in other States of Domestic Corporation.
- § 212. Corporations Chartered in more than one State.

#### Sec. 207. Foreign Personal Estate of Resident.

The liability of property to inheritance tax does not depend upon its location, but upon whether the beneficiary came into its possession through the exercise of a privilege conferred by the state.<sup>1</sup> The succession to personal property of the decedent wherever situated is taxable at the domicile of the decedent,<sup>2</sup> although the foreign assets may have been distributed in the foreign jurisdiction,<sup>3</sup> and although the state of the situs of the property may have already imposed a tax on its transfer,<sup>4</sup> but not where the decedent's debts in the foreign jurisdiction exceeded his property there.<sup>5</sup> Rulings as to the situs of personal property under the general tax law are not controlling on a construction of the inheritance law, as the inheritance laws are not taxes in the strict sense of the term.<sup>6</sup>

<sup>1</sup> *People v. Griffith*, 245 Ill. 532, 92 N. E. 313.

<sup>2</sup> *Appeal of Gallup*, 76 Conn. 617, 57 A. 699. *Frothingham v. Shaw*, 175 Mass. 59, 61, 78 Am. St. Rep. 475. *In re Swift*, 137 N. Y. 77, 88, 32 N. E. 1096, 18 L. R. A. 709, 64 Hun 639, 16 N. Y. Suppl. 193, 19 N. Y. Suppl. 292. *Estate of Cornell*, 170 N. Y. 423, 63 N. E. 445. *State v. Bullen*, 143 Wis. 512, 520, 128 N. W. 109. *Thomson v. Lord Advocate*, 12 Clark & Finnelly 1. *In re Joyslin*, 76 Vt. 88, 56 A. 281, appears to be out of harmony with the New York and Massachusetts rule.

**Tangible Assets.** Under the Iowa code, s. 1467, where a resident of Iowa died owning cattle outside the state, the estate was not required to pay an inheritance tax on these cattle, on the ground that tangible property like this may have a situs other than that of the domicile of the owner, and that there may be a distinction between tangible property such as horses and cattle and intangible property such as debts and choses in action. Cattle belonging to the deceased were not within the jurisdiction of the state unless it be constructively. The fact that the cattle were sold about four months after the death of testator and the proceeds brought within the state later does not affect the matter. The

death of the testator seems to fix the time when the property became subject to the tax, and at the death of the testator the cattle were not in the state. When this property passed to the collateral heirs it was clearly not subject to the tax. If the property had been distributed in the state of Missouri there would be no doubt that it would not have been subject to the tax imposed by our law, and the bringing of the proceeds into this state for the purpose of distribution would not make it subject to the tax. *Weaver v. State*, 110 Iowa 328, 81 N. W. 603. See the New York act of 1911.

<sup>3</sup>*Appeal of Hopkins*, 77 Conn. 644, 655, 60 A. 657. *In re Dingman*, 66 N. Y. App. Div. 228, 72 N. Y. Suppl. 694. *State v. Bullen*, 143 Wis. 512, 523, 128 N. W. 109.

<sup>4</sup>*In re Hartman*, 70 N. J. Eq. 664, 62 A. 560. As to double taxation, see further, *ante*, Chapter XXVII.

<sup>5</sup>*Commonwealth v. Coleman*, 52 Pa. St. 468, 473.

<sup>6</sup>*People v. Griffith*, 245 Ill. 532, 92 N. E. 313.

[Powers over assets out of state, see *ante*, s. 140.]

## Sec. 208. Foreign Real Estate of Resident.

The jurisdiction of the domicile of the testator cannot impose a tax on his foreign real estate,<sup>1</sup> although the devisor and devisee are both residents of the state.<sup>2</sup>

<sup>1</sup>*Connell v. Crosby*, 210 Ill. 380, 71 N. E. 350. *In re Swift*, 137 N. Y. 77, 88 32 N. E. 1096, 18 L. R. A. 709, 64 Hun 639, 16 N. Y. Suppl. 193, 19 N. Y. Suppl. 292. *Commonwealth v. Coleman*, 52 Pa. St. 468, 473. *In re Hale*, 161 Pa. St. 181, 183, 28 A. 1071.

**Reason of the Rule.** A note in 19 *Harvard Law Review*, p. 201, discusses the liability of foreign real estate to the collateral inheritance tax. The editor points out that the inheritance tax being a tax on a privilege in the case of personality each state allows the property within its jurisdiction to pass by the law of the state of the decedent's domicile and therefore two states may each grant a privilege and may each levy a tax. But in the case of realty title passes by the *lex rei sitæ* and that state alone controls the privilege of succession.

<sup>2</sup>All property of the citizen within the state may be taxed and all such property outside the state as is drawn to or follows in law the domicile or person of the owner, such as bonds and mortgages, etc., no matter where situated. But real estate is not drawn to the person or domicile of the owner for taxation or any other purpose and hence cannot be taxed outside of the jurisdiction where it is situated. The taxation of property involves the reciprocal duty of protection on the part of the state levying such tax. *In re Bittinger*, 129 Pa. St. 338, 345, 18 A. 132.

## Sec. 209. Resident Owner of Stock in Foreign Corporation.

Stock in foreign corporations is almost universally taxable at the jurisdiction of the owner's domicile,<sup>1</sup> although the certificates themselves may be out of the state.<sup>2</sup>

<sup>1</sup>*Appeal of Gallup*, 76 Conn. 617, 57 A. 699 (under the amendment of 1903). *Estate of Cornell*, 170 N. Y. 423, 63 N. E. 445. *State v. Bullen*, 143 Wis. 512,

128 N. W. 109. *Contra, In re Thomas*, 3 Misc. Rep. 388, 24 N. Y. Suppl. 713 under N. Y. St. 1885.

<sup>2</sup>*Frothingham v. Shaw*, 175 Mass. 59, 78 Am. St. Rep. 475.

### **Sec. 210. Non-Resident Trustee Holding Property for Resident.**

The fact that certain trust property passing under a deed of trust was at the intestate's death in another state with the legal title in the trustee does not affect the liability of the transfer to taxation. The liability accrued at the time of the transfer, no matter when imposed. The deceased was a resident of the state at the time of the transfer, and the property was in the state and the transfer was made in the state. The deed in question was a deed in trust reserving a life estate to the grantor.

*In re Keeney*, 194 N. Y. 281, 287, 87 N. E. 428, affirming 128 N. Y. App. Div. 893. See further, *Frothingham v. Shaw*, 175 Mass. 59, 78 Am. St. Rep. 475, where the securities were in the hands of agents outside the state.

### **Sec. 211. Property in Other States of Domestic Corporation.**

Where a corporation has but a single corporate existence under the laws of one state, its shareholders have an interest for the purposes of the succession tax in all the corporate property wherever situated.<sup>1</sup> So where a non-resident held stock in a New York railroad corporation, it was claimed that the tax should be only upon that proportion of its value which represents the proportion of the capital and assets of the company employed within the state of New York. Where it appeared that only sixty-four per cent of the capital was invested in the state of New York, it is argued that the appraisal of the value of the stock should have been proportionately less. The court holds, however, that the market value of the stock may or may not represent proportionately the actual value of the corporate properties. "That value, whatever it may be in the market, is the worth attached to an interest in the corporate assets and properties regarded as a whole. A share of capital stock represents the distinct interest which its holder has in the corporation, and his right to participate in the distribution of the net earnings of the corporation. They evidence the extent of his proprietary interest, and their assessment for taxation purposes must be upon that interest, and must be regarded as an entity, and is unapportionable with reference to the situs of the corporate properties. The tax imposed by the state upon the transfer of

such property, upon the decease of its owner, is not upon the property which passes; it is upon the right of succession to it.”<sup>2</sup>

<sup>2</sup>*In re Cooley*, 186 N. Y. 220, 227, 78 N. E. 939, 10 L. R. A. N. S. 1010, reversing on another point, 113 N. Y. App. Div. 388, 98 N. Y. Suppl. 1006.

A railroad company with a Massachusetts charter formed by the consolidation of Massachusetts and New York corporations, and owning tracks in both states, is a Massachusetts corporation so far as the Mass. St. 1891, c. 425, is concerned, and stock in the company owned by a non-resident decedent is assessable under that statute. *Moody v. Shaw*, 173 Mass. 375, 377.

<sup>3</sup>*In re Palmer*, 183 N. Y. 238, 76 N. E. 16, affirming 102 N. Y. App. 616. See further, *ante*, s. 197.

## Sec. 212. Corporations Chartered in more than one State.

The courts of last resort of three states have decided that where the same railroad corporation is incorporated in more than one state, its stock for the purposes of the inheritance tax in each state shall be appraised only at that proportional part of the market value of its stock as the value of its franchises and property situated within the state bears to the total value of its franchises and property wherever situated. These decisions have been rendered in the absence of specific statutory authority, proceeding on broad lines of equity in the effort to avoid double taxation.<sup>1</sup> Various suggestions for estimating this value have been made; among others, that an apportionment based upon trackage or figures drawn from the books or balance sheets of the company may doubtless be easily reached, which will be substantially correct, and any inaccuracies of which, when reflected in a tax of one per cent, will be inconsequential.<sup>2</sup>

<sup>1</sup> *Kingsbury v. Chapin*, 196 Mass. 533, 82 N. E. 700. See further, *post*, s. 259.

The **Boston and Maine Railroad** is a domestic corporation in each of the states in which it is incorporated; and while the estate of a deceased non-resident stockholder requires the aid of the probate laws of this state to effectuate a transmission of the stockholders' right in the property of the local corporation, their aid is not required to effectuate the transmission of his right to property of the corporation in other states in which it is also chartered; and the value of the property requiring the aid of our laws for its transmission must, in such case at least, be taken as the measure of the tax called for by our statute. *Gardiner v. Carter*, 74 N. H. 507, 510, 69 A. 939.

“The **Boston and Albany Railroad Company** is a consolidation formed by the merger of one or more New York corporations and one Massachusetts corporation. The merger was authorized and the said consolidated corporation duly and separately created and organized under the laws of each state. It was, so to speak, incorporated in duplicate. There is but a single issue of capital stock, representing all of the property of the consolidated and dual organization.

Of the track mileage about five-sixths is in Massachusetts and one-sixth in New York. The principal offices, including the stock transfer office, are situated in Boston and there also are regularly held the meetings of its stockholders and directors. The deceased was a resident of the state of Connecticut and owned four hundred and twenty-six shares of the capital stock, the value of which for the purposes of the transfer tax was fixed at the full market value of \$252.50 per share of the par value of \$100.

"If the courts of New York hold that this stock is assessable at its full value in New York, then the courts of Massachusetts should also hold that it is assessable for its full value in Massachusetts, which would lead to great injustice as double taxation. Double taxation is one which the courts should avoid whenever it is possible within reason to do so. (*Matter of James*, 144 N. Y. 6, 11.) It is never to be presumed. Sometimes tax laws have that effect, but if they do it is because the legislature has unmistakably so enacted. All presumptions are against such an imposition. (*Tennessee v. Whitworth*, 117 U. S. 129.)

"I see nothing in the statute which prevents us from paying decent regard to the principles of interstate comity and from adopting a policy which will enable each state fairly to enforce its own laws without oppression to the subject. This result will be attained by regarding the New York corporation as owning the property situate in New York and the Massachusetts corporation as owning that situate in Massachusetts, and each as owning a share of any property situate outside of either state or moving to and fro between the two states, and assessing decedent's stock upon that theory. That is the obvious basis for a valuation if we are to leave any room for the Massachusetts corporation and for a taxation by that state similar in principle to our own without double taxation." *Per* Hiscock, J., in *In re Cooley*, 186 N. Y. 220, 228, 78 N. E. 939, 10 L. R. A. N. S. 1010, reversing 113 N. Y. App. Div. 388, 98 N. Y. Suppl. 1006.

<sup>1</sup>*In re Cooley*, 186 N. Y. 220, 232, 78 N. E. 939, 10 L. R. A. N. S. 1010, reversing 113 N. Y. App. Div. 388. *In re Thayer*, 58 Misc. 117, 110 N. Y. Suppl. 751 (including branch lines).

"It may be difficult to ascertain the exact value of the plaintiff's right in the property of the local corporation; but if the tax is assessed upon such a percentage of the value of the stock as the amount of trackage within the state bears to the total trackage in the several states of its incorporation, the practical difficulty may be obviated; and it does not appear that the requirements of the statute would not be met." *Per* Bingham, J., in *Gardiner v. Carter*, 74 N. H. 507, 510, 69 A. 939.

## CHAPTER XXX.

### SITUS OF CHOSSES IN ACTION.

- § 213. In General.
- § 214. Bank Deposits.
- § 215. Bonds.
- § 216. Claim against Estate of Another.
- § 217. Contract to Sell Land.
- § 218. Insurance.
- § 219. Mortgages on Real Estate.
- § 220. Partnership Interests.
- § 221. Interest in Real Estate Trust Association.

#### Sec. 213. In General.

Choses in action have their situs for purposes of the inheritance tax at the domicile of the creditor<sup>1</sup> and not at that of the debtor,<sup>2</sup> or where it has a place of business.<sup>3</sup> The fact that in the inventory the debtor is described as a banker who does business in New York cannot vary the result, where no pass book or voucher was ever delivered, and it does not appear that the decedent ever drew checks upon the account or that it was to be repaid otherwise than upon oral demand.<sup>4</sup>

The choses in action of a resident are taxable at his domicile though physically out of the state. Promissory notes, bonds and mortgages belonging to a resident of New York, which at the time of the testator's death were in the hands of his agent in Michigan, are taxable under the statute of 1885, chapter 483, as amended by the statute of 1891, chapter 215,<sup>5</sup> although the tax has been held in some cases as dependent on the physical location of the securities.<sup>6</sup>

<sup>1</sup> Intangible choses in action held by a non-resident in her possession at the date of her death in New Hampshire, where she resided, are not taxable under the Iowa collateral inheritance tax where the debtor was a resident of Iowa. The court holds that the situs of the choses in action attaches to the owner, that any debt has its situs at the residence of the creditor. The court remarks that *Bridges v. Griffin*, 33 Ga. 113, is the only case it has been able to find which holds that the residence of the debtor fixes the situs of the property. *Gilbertson v. Oliver*, 129 Iowa 568, 105 N. W. 1002, 4 L. R. A. N. S. 953. See, however, *In re Joyslin*, 76 Vt. 88, 56 A. 281. Rights in certain unsigned bonds, see *ante*, s. 199, n. 3.

<sup>2</sup> *Citizens Bank v. Sharp*, 53 Md. 521. *Kintzing v. Hutchinson*, Fed. Cas. 7834. *Allen v. Philadelphia Sav. Fund Soc.*, Fed. Cas. No. 234.

The essential fact which alone permitted the imposition of an inheritance tax at the domicile of the debtor in certain cases was the fact that the creditor in each one of them was under the necessity of going to the domicile of his debtor for protection and collection of his claim, and this appeared in *Blackstone v. Miller*, 188 U. S. 189. *In re Houdayer*, 150 N. Y. 37. *In re Clinch*, 180 N. Y. 300. *In re Gordon*, 186 N. Y. 471, 474, 79 N. E. 722, 10 L. R. A. N. S. 1089, affirming 114 N. Y. App. Div. 202, 99 N. Y. Suppl. 630.

The court notes the contention of the state treasurer that because debts owned by a non-resident against a resident of Massachusetts can only be enforced by the aid of Massachusetts' courts it ought to hold they are property within the jurisdiction of the state; but the court does not decide this contention. *Kinney v. Stevens*, 207 Mass. 368, 93 N. E. 586.

The contrary result has been reached in Vermont. The testator, a resident of Vermont, died, leaving debts due to her from non-residents of Vermont; and the court holds that these debts are not to be included in fixing the amount of the estate subject to an inheritance tax under Vermont statute, 1896, c. 46. The act applies to "all property within the jurisdiction of this state." The court remarks that this must mean within its probate jurisdiction and that therefore the debts were not within the jurisdiction, for immediately upon the death of the creditor they became assets in the jurisdiction where the debtor resided. This is well settled in Vermont. Furthermore, the statute applies only to property which "passed by will or by the intestate laws of this state." And the court remarks that this property did not pass by virtue of the Vermont law at all, or that law had no force in the domicile of the debtors; it passed by force and virtue of the law of those jurisdictions. The court remarks that it is aware that other courts have reached an opposite conclusion and cites *Frothingham v. Shaw*, 175 Mass. 59, *State v. Dalrymple*, 70 Md. 294, 17 A. 82, 3 L. R. A. 372. *In re Swift*, 137 N. Y. 77, 64 Hun 639, 32 N. E. 1096, 18 L. R. A. 709, 19 N. Y. Suppl. 292. *In re Joyslin*, 76 Vt. 88, 56 A. 281.

After the decision in *In re Joyslin* (76 Vt. 88, 56 A. 281) the legislature passed Vermont statute of 1904, c. 30, which changed the phraseology of the earlier act, which included only property which passed by will, or by the intestate laws of the state, to include also property which shall pass by "the decree of the court of this state." Where the record does not show that any administration was had in the foreign jurisdiction and that the several sums due from foreign debtors were collected by the administrator appointed in Vermont, and the proceeds brought here, where they formed a part of the assets which passed by the final decree of the probate court, such assets are subject to tax.

It was argued that in Vermont statute 1904, c. 30, s. 81, the word "persons" in the phrase "shall also apply to all persons who deceased prior to the enactment thereof," had reference to those who received the property, not those from whom it passes. But the court refused to follow this contention, as it would lead to an absurd result. In view of the settled law that the inheritance tax is not a tax on property, but on the transmission of property, it can make no difference with the tax whether the legatee or distributee be alive or dead. *In re Howard*, 80 Vt. 489, 495, 68 A. 513.

<sup>3</sup> *In re Horn*, 39 Misc. Rep. 133, 78 N. Y. Suppl. 979.



<sup>4</sup> *In re Bentley*, 31 Misc. Rep. 651, 66 N. Y. Suppl. 95.

<sup>5</sup> *In re Corning*, 3 Misc. Rep. 160, 51 N. Y. St. 265, 23 N. Y. Suppl. 285.

<sup>6</sup> See *post*, s. 199. *In re Speers*, 4 Ohio N. P. 238, 6 Low. D. 398.

The decedent, a resident of Connecticut, died owning certain promissory notes which were in a safe deposit box in the city of New York. With two exceptions the notes were made by non-residents of the state of New York and payment of all of them was secured by property outside of the state. The court holds that they are subject to taxation, relying upon *In re Wall*, 105 N. Y. App. Div. 643, 94 N. Y. Suppl. 1166, and *In re Whiting*, 150 N. Y. 27, 44 N. E. 715, 34 L. R. A. 232, 55 Am. St. Rep. 640. The court remarks that two of the notes are made by residents of New York and says that it is possible that they should be treated differently, but that it does not seem to the court that the residence of the debtor can change the character of property or determine whether it is liable to an inheritance tax. *In re Tiffany*, 143 N. Y. App. Div. 327, 128 N. Y. Suppl. 106.

## Sec. 214. Bank Deposits.

A deposit in a bank in another state is taxable at the domicile of the depositor.<sup>1</sup> Deposits in banks may be also taxable at the place of deposit,<sup>2</sup> irrespective of the physical location of the certificates of deposit themselves,<sup>3</sup> and although the deposit was temporary, for investment only.<sup>4</sup> Our supreme court has clearly expressed the theory of such a tax in the following language, where an Illinois decedent left funds in a New York trust company:—

“If the transfer of the deposit necessarily depends upon and involves the law of New York for its exercise, or in other words, if the transfer is subject to the power of the state of New York, then New York may subject the transfer to a tax. . . . But it is plain that the transfer does depend upon the law of New York, not because of any theoretical speculation concerning the whereabouts of the debt, but because of the practical fact of its power over the person of the debtor.” “What gives the debt validity? Nothing but the fact that the law of the place where the debtor is will make him pay. It does not matter that the law would not need to be invoked in the particular case. Most of us do not commit crimes, yet we nevertheless are subject to the criminal law, and it affords one of the motives for our conduct. So again, what enables any other than the very creditor in proper person to collect the debt? The law of the same place. To test it, suppose that New York should turn back the current of legislation and extend to debts the rule still applied to slander, that *actio personalis moritur cum persona*, and should provide that all debts hereafter con-

tracted in New York and payable there should be extinguished by the death of either party. Leaving constitutional considerations on one side, it is plain that the right of the foreign creditor would be gone. Power over the person of the debtor confers jurisdiction, we repeat. And this being so, we perceive no better reason for denying the right of New York to impose a succession tax on debts owed by its citizens than upon tangible chattels found within the state at the time of the death. The maxim, *mobilia sequuntur personam*, has no more truth in the one case than in the other. When logic and the policy of a state conflict with a fiction due to historical tradition, the fiction must give way." <sup>5</sup>

<sup>1</sup> *Mann v. Carter*, 74 N. H. 345, 68 N. E. 130 (savings bank).

<sup>2</sup> *People v. Griffith*, 245 Ill. 532, 543, 92 N. E. 313. *In re Houdayer*, 150 N. Y. 37. *In re Burr*, 16 Misc. Rep. 89, 74 N. Y. St. 490, 38 N. Y. Suppl. 811 (savings bank deposit). *In re Speers*, 4 Ohio N. P. 238, 6 Low. D. 398. *Contra, Gilbertson v. Oliver*, 129 Iowa 568, 105 N. W. 1002, 4 L. R. A. N. S. 953.

Money deposited by a non-resident in a New York trust company is property within the state subject to the inheritance tax, although mingled with the funds of an estate he represented as trustee. "If he had deposited in specie, to be returned in specie, there can be no doubt that the money would be property in this state subject to taxation. But, instead, he did as business men generally do, deposited his money in the usual way, knowing that, not the same, but the equivalent, would be returned to him upon demand. While the relation of debtor and creditor technically existed, practically he had his money in the bank and could come and get it when he wanted it. It was an investment in this state subject to attachment by creditors. If not voluntarily repaid, he could compel payment through the courts of this state. The depositary was a resident corporation, and the receiving and retaining of the money were corporate acts in this state. Its repayment would be a corporate act in this state. Every right springing from the deposit was created by the laws of this state. Every act out of which those rights arose was done in this state. In order to enforce those rights, it was necessary for him to come into this state. Conceding that the deposit was a debt, conceding that it was intangible, still it was property in this state for all practical purposes, and in every reasonable sense within the meaning of the transfer tax act.

"While distribution of the fund belongs to the state where the decedent was domiciled, as such distribution cannot be made until his administrator has come into this state to get the fund, possibly, after resorting to the courts for aid in reducing it to possession, the fund has a situs here, because it is subject to our laws. A reasonable test in all cases, as it seems to me, is this: Where the right, whatever it may be, has a money value and can be owned and transferred, but cannot be enforced or converted into money against the will of the person owning the right without coming into this state, it is property within this state for the purposes of a succession tax. Thus the right in question is property, because it is capable of being owned and transferred. It is within this state, because the owner must come here to get it. It is subject to taxation, because it is under the con-

trol of our laws. It has a money value, because it is virtually money, or can be converted into money upon demand. It is subject to a transfer tax, because the passing, by gift or inheritance, of 'all property, or interest therein, whether within or without this state, over which this state has any jurisdiction for the purposes of taxation,' comes within the expressed intention of the legislature." *Per Vann, J.*, in *In re Houdayer*, 150 N. Y. 37, 40, 44 N. E. 718, 34 L. R. A. 235, 55 Am. St. Rep. 642, reversing 3 N. Y. App. Div. 474, 38 N. Y. Suppl. 323. (All the justices did not agree with the reasoning given by Vann, J., but they were "of the opinion that a deposit of money in a bank although technically a debt is still money for all practical purposes and as such is taxable under the transfer tax act.")

<sup>3</sup> *In re Hewitt*, 181 N. Y. 547.

<sup>4</sup> A deposit in a trust company by a non-resident in this state for nearly two months before the date of the death of the testator is subject to tax notwithstanding the contention that the deposit was here temporarily for the purpose of investment only. *In re Myers*, 129 N. Y. Suppl. 194.

The testator was a resident of Montana and died November 12, 1900, owing a debt against a resident of New York city. The testator had previously loaned money to a resident of New York who gave a check during the last illness of the testator to the testator's secretary in payment of the loan. The secretary deposited this in a New York bank in a special account to the credit of the testator. The court holds that this account is subject to the New York transfer tax although it has also paid a tax in Montana. The court relies on the case of *Blackstone v. Miller*, 188 U. S. 189, 23 S. Ct. 277, 47 L. Ed. 439. *In re Daly*, 182 N. Y. 524, 74 N. E. 1116, affirming 100 N. Y. App. Div. 373, 91 N. Y. Suppl. 858.

Where a deposit is made in a trust company where it remains fourteen months while the owner is seeking new investment a finding is justified that the property was not "in transitu" in such a sense as to withdraw it from the power of the state. *Blackstone v. Miller*, 188 U. S. 189, 203, 23 S. Ct. 277, 47 L. Ed. 439, affirming 171 N. Y. 682, 69 N. Y. App. Div. 127.

<sup>5</sup> *Per Holmes, J.*, in *Blackstone v. Miller*, 188 U. S. 189, 23 S. Ct. 277, 47 L. Ed. 439. *In re Blackstone*, 171 N. Y. 682, affirming 69 N. Y. App. Div. 127, 74 N. Y. Suppl. 508, reversing 72 N. Y. Suppl. 59.

This language was quoted as controlling the court in *In re Rogers*, 149 Mich. 305, 112 N. W. 931, 11 L. R. A. N. S. 1134, 14 Detroit Leg. N. 444, 119 Am. St. Rep. 677.

## Sec. 215. Bonds.

Bonds have the same situs as the domicile of the owner.<sup>1</sup> So bonds of domestic corporations held by non-residents are not taxable<sup>2</sup> unless actually situated within the state at the death of the testator.<sup>3</sup>

<sup>1</sup> *A appeal of Orcutt*, 97 Pa. St. 179.

<sup>2</sup> *In re Bronson*, 150 N. Y. 1. *In re Whiting*, 150 N. Y. 27. *In re Morgan*, 150 N. Y. 35. *In re Del Busto*, 6 Pa. Co. Ct. 289.

The bonds of a domestic corporation held outside the state by non-residents do not represent "property within the state" in any conceivable sense. The

property they represented consisted in the debt of their maker and that species of property is a chose in action belonging to the owner and inseparable from his personalty. *In re Bronson*, 150 N. Y. 1, 8, 44 N. E. 707, 34 L. R. A. 238, 55 Am. St. Rep. 632, modifying 1 N. Y. App. Div. 546, 37 N. Y. Suppl. 476.

<sup>2</sup>*People v. Griffith*, 245 Ill. 532, 543, 92 N. E. 313.

A distinction has been made between tangible and intangible personal property, holding that intangible property has no situs other than the owner's domicile, and hence that bonds cannot be taxed in Pennsylvania simply because they were kept there. *In re Orcutt*, 97 Pa. St. 179. *Contra*, *In re Whiting*, 150 N. Y. 27, 31, 44 N. E. 715, 34 L. R. A. 232, 55 Am. St. Rep. 640, modifying 2 N. Y. App. Div. 590, 38 N. Y. Suppl. 131. *In re Schermerhorn*, 50 Misc. 233, 100 N. Y. Suppl. 480.

## Sec. 216. Claim against Estate of Another.

Where a non-resident legatee dies before the settlement of an unsettled general bequest to him, a tax may be assessed by the state of the original decedent, as a claim of this character is not too intangible for taxation in the state of the debtor estate.<sup>1</sup> But where the personal estate of a resident of New York consisted entirely of her distributive share in the estate of a deceased sister who resided in Ohio, but no part of this estate had come into the possession of the testatrix prior to her death, but consisted of money sent directly from the trustee of the estate of the deceased sister to the executor of the New York testator for the purposes of distribution, that portion of the personal estate is not liable to taxation in New York.<sup>2</sup>

So the mere fact that securities were in a state is no reason for laying a tax on the estate of the legatee,<sup>3</sup> but where the original decedent was also a resident of the same state, a tax may be laid so far as the property passes to persons liable to tax in that state.<sup>4</sup>

<sup>1</sup> The testator was a citizen of France and died before the payment to him of his share in his father's estate, the father being a resident of New York and his will being admitted to probate in this state. Subsequently, distribution was had and the executor of the son appointed in New York received certain securities in satisfaction of his share of the father's estate. It was contended that at the time of the death of the son his interest in his father's estate was a mere chose in action, the situs of which was not this state but at the son's domicile in France, that hence that was not property within the state and subject to our inheritance laws. The court holds that it cannot concede that a claim due a non-resident from a resident of this state is not property within this state subject to the imposition of the transfer tax. The court refuses to follow *In re Phipps*, 143 N. Y. 641, 77 Hun 325, and says that that case has been overruled in effect by *In re Blackstone*, 171 N. Y. 682, affirmed in *Blackstone v. Miller*, 188 U. S. 189. Under the doctrine of the *Blackstone* case the interest of the son in his father's estate

was subject to the inheritance tax imposed by the laws of this state, as it was a claim due a non-resident from a resident of this state. *In re Clinch*, 180 N. Y. 300, 73 N. E. 35, affirming 99 N. Y. App. Div. 298, 90 N. Y. Suppl. 923, 44 Misc. 190, 89 N. Y. Suppl. 802. The testator died in 1891 leaving the residue to a non-resident. The residuary legatee died in 1892. The New York transfer tax authorities fixed the amount of her estate subject to tax, including the residuary legacy to the non-resident, and the tax was paid. The legacy to the non-resident was never paid to him nor was it in a condition to be paid, as he died while the testator's estate was unsettled. By his will he gave his estate to his widow. The court notices the doctrine as to the situs of tangible personal property, but says that a mere chose in action has never yet been given the attribute of tangibility and this was all that the residuary legatee had at the time of his death. He had a right to claim the amount of money which his share of the residuary estate would result in and nothing more. He had no right in any particular piece of property or any particular sum of money. The court holds, therefore, that no tax should have been laid upon this legacy, as the statute was intended to cover only tangible property kept within this state by the decedent, and that property which is transiently here, as upon the person or in the baggage of a man suddenly dying within this state, was never intended to be covered by the provisions of the act. *In re Phipps*, 143 N. Y. 641, 37 N. E. 823, affirming 77 Hun 325, 28 N. Y. Suppl. 330.

<sup>2</sup>*In re Thomas*, 3 Misc. Rep. 388, 24 N. Y. Suppl. 713. In *In re Milliken*, 206 Pa. St. 149, 55 A. 853, however, the tax was assessed under the law of the domicile of the original legatee.

<sup>3</sup>Where the husband and wife are both residents of New Jersey and the husband dies leaving in a safe deposit box in New York certain securities, and cash on deposit in a New York bank, and bequeathing by will all of his property to his wife, before the will was admitted to probate the wife died, leaving a last will and testament by which she left certain legacies. After the death of the wife the will of her husband was admitted to probate by a New Jersey court and subsequently her will was also admitted to probate by this court. Subsequently the executor of the husband removed his securities to New Jersey and paid to the executor of the wife various sums of money in payment of her legacy. The court finds that although the property of the husband was actually in the state of New York at his death, still the claim of the wife against this estate was never property within the state of New York, as the right that the wife had in her husband's estate was not a right to the particular personal property which he owned, but a right to the balance of the proceeds of his property after the payment of debts and expenses of administration. And that right at her death was solely a claim against his executor and was not therefore property within the state of New York at the death of the wife. *In re Lord*, 186 N. Y. 549, 79 N. E. 1110, affirming 111 N. Y. App. Div. 152, 97 N. Y. Suppl. 553.

Where the intestate who lived in Oklahoma died immediately after his sister who lived in Pennsylvania and no administration was taken out in Oklahoma but administration was taken out in Pennsylvania where the only known creditor was, and where the fund was paid by the administrator of the sister directly to the administrator of the intestate in Pennsylvania, the fund was never out of the state and had a situs in Pennsylvania and not at the domicile of the decedent, and is therefore subject to the Pennsylvania collateral inheritance tax. *In re*

Weaver (Orph. Ct.), 4 Pa. Dist. R. 260. (This decision is accounted for by the Pennsylvania doctrine that the inheritance tax is a property tax.—*Ed.*)

<sup>4</sup>Where a resident of California died shortly after the death of his brother who resided in Maryland and the estate of the Californian is entitled to certain securities and other property from the estate of the resident of Maryland, this property, so far as it went to collaterals, was subject to tax. The court in this case did not need to consider and did not consider the question of the division of the property as to whether the particular property in Maryland actually went to a collateral or to a direct descendant, as in this case the will gave the whole of the personal property to a collateral, so that the property in question was clearly subject to the tax. *State v. Dalrymple*, 70 Md. 294, 17 A. 82, 3 L. R. A. 372.

### Sec. 217. Contracts to Sell Land.

Contracts to sell land may be taxable where the land is.<sup>1</sup> A right to receive the purchase price under a contract to sell land, however, is a debt, and taxable only at the home of the vendor.<sup>2</sup>

<sup>1</sup>Where the testator was domiciled and resided in New York at her death and owned certain land in Michigan and had made a contract to sell this land but the title remained in the testator at her death, these land contracts were taxable to the estate of the decedent as personal property under the inheritance tax law of Mich. 1899, c. 188. *In re Stanton*, 142 Mich. 491, 105 N. W. 1122, 12 Detroit Leg. N. 829.

<sup>2</sup>*Dodge County v. Burns*, (Neb. 1911,) 131 N. W. 922.

### Sec. 218. Insurance.

Interests under an insurance policy on the life of a non-resident are not taxable at the domicile of the corporation which issues the policy,<sup>1</sup> where the corporation has property sufficient to pay the policy in the state of the insured and has there appointed an attorney to receive service, where the policy has always been kept within the state of the insured, the insured dies there, executors were appointed there and premiums were paid there.<sup>2</sup> Taxes cannot be based on the mere fact that the policies themselves are located in the state,<sup>3</sup> although issued by a local company.<sup>4</sup>

<sup>1</sup>*In re Abbott*, 29 Misc. Rep. 567, 61 N. Y. Suppl. 1067. See further, *ante*, s. 107.

"In conclusion we might say that we are unable to contemplate with a confidence born of great optimism the results which would follow from the adoption and enforcement of the doctrine urged by appellant. If the contract in this case is subject to the imposition of a transfer tax, then any contract of insurance issued to a non-resident, passing to and held by his non-resident representatives or assigns, and being administered and enforceable in a foreign jurisdiction, whether in the state of Texas or California, or in some foreign country, would afford the basis of taxation in this state, provided only the policy was issued by

a New York corporation and access could be obtained by the tax collector to its proceeds. No distance of domicile of the assured and his transferees or beneficiaries, and no completeness of foreign jurisdiction over administration and enforcement, and no lack of anticipation of such a result upon the part of the assured, would be a bar to the attempted application of the taxing power. It requires no great imaginative processes to picture the limits and the disapproval and friction to which this theory would lead if logically carried to its full length. It was undoubtedly the intent of the legislature that the statute under consideration should be liberally construed to the end of taxing the transfer of all property which fairly and reasonably could be regarded as subject to the same, and this court has unequivocally placed itself upon record in favor of construing the statute in the light of such intent. But the proposition now propounded, if adopted, would lead far beyond any point which has thus far been reached, and we do not believe that it would be wise or practicable to adopt it. We can scarcely believe that the various states and countries which have so carefully and positively protected their citizens holding policies of insurance issued by foreign corporations from the burden and annoyance of being compelled to go to distant forums for the purpose of enforcing their contracts, would permit them to be subjected to a species of taxation based upon an assumed necessity for resort to foreign courts which has thus been obviated. We believe that if the policy being urged upon us were adopted, the great business of insurance now being conducted by corporations chartered and under the protection of the state of New York would be subjected to new and unexpected embarrassment." *Per* Hiscock, J., in *In re Gordon*, 186 N. Y. 471, 483, 79 N. E. 722, 10 L. R. A. N. S. 1089, affirming 114 N. Y. App. Div. 202, 99 N. Y. Suppl. 630.

<sup>2</sup>The court holds that this is sufficient to distinguish the case from *Blackstone v. Miller*, 188 U. S. 189. The court says that in all cases where the tax has been imposed at the domicile of the debtor, the creditor has been forced of necessity to go to that domicile for the collection of his tax, but as that fact did not appear in this case it would be unreasonable to tax the proceeds of this policy in New York. *In re Gordon*, 186 N. Y. 471, 474, 79 N. E. 722, 10 L. R. A. N. S. 1089, affirming 114 N. Y. App. Div. 202, 99 N. Y. Suppl. 630.

<sup>3</sup>*In re Gibbs*, 60 Misc. 645, 113 N. Y. Suppl. 939.

<sup>4</sup>A policy of insurance cannot have of itself a situs. It is nothing more than written evidence of a contract to pay a sum on conditions to be performed. *In re Horn*, 39 Misc. Rep. 133, 78 N. Y. Suppl. 979.

## Sec. 219. Mortgages on Real Estate.

A good example of the different grounds of taxation is found in the case of mortgages or other liens on real estate where the lienholder dies owning a mortgage or other lien on land in another jurisdiction. Here the succession may be taxable either at the home of the mortgagee,<sup>1</sup> or in the jurisdiction where the land lies,<sup>2</sup> although the note and mortgage is actually in the possession of the mortgagee at his domicile.<sup>3</sup>

It has even been contended by counsel that the state where the note and mortgage are kept may tax their succession, although the domicile of the mortgagee and situs of the land are elsewhere.<sup>4</sup>

<sup>1</sup>*Frothingham v. Shaw*, 175 Mass. 59, 78 Am. St. Rep. 475. (*Callahan v. Woodbridge*, 171 Mass. 595, is distinguished, as there testator's domicile was in New York and it does not appear that the note and mortgage were in Massachusetts.) *In re Stanton* (Orph. Ct.), 3 Pa. Dist. R. 371, 34 Wkly. Notes Cas. 391.

<sup>2</sup>*In re Merriam*, 147 Mich. 630, 9 L. R. A. N. S. 1104, 111 N. W. 196, 14 Detroit Leg. N. 6, 118 Am. St. Rep. 561.

Mich. St. 1903, c. 195, amending s. 21 of the Mich. St. 1899, c. 188, by eliminating from s. 21 the words "over which this state has any jurisdiction for the purposes of taxation," has no effect to narrow the provisions of the statute as to the taxation of the personal property of non-residents. The court for that reason follows *In re Merriam*, 147 Mich. 630, 111 N. W. 196, 9 L. R. A. N. S. 1104, 14 Detroit Leg. N. 6, cited under the earlier act. *In re Rogers*, 149 Mich. 305, 112 N. W. 931, 11 L. R. A. N. S. 1134, 14 Detroit Leg. N. 444, 119 Am. St. Rep. 677. See *Blackstone v. Miller*, 188 U. S. 189.

**Reason for Rule.** Where the testator was a mortgagee of land in Michigan and lived in New York the court remarks that he could not preserve his lien without complying with the registry law of Michigan; that the debts secured cannot be collected without the aid of the laws of Michigan; that the estate of the testator cannot be properly administered or closed without ancillary letters of administration obtained under the laws of Michigan; and therefore it is subject to an inheritance tax in Michigan. *In re Rogers*, 149 Mich. 305, 112 N. W. 931, 11 L. R. A. N. S. 1134, 14 Detroit Leg. N. 444.

**The New York Rule.** Bonds owned by a non-resident secured by mortgages on land in New York are not subject to tax in New York. *In re Bronson*, 150 N. Y. 1, 44 N. E. 707, 34 L. R. A. 238, 55 Am. St. Rep. 632. *In re Fearing*, 200 N. Y. 340, 93 N. E. 956, affirming 123 N. Y. Suppl. 396. *In re Preston*, 75 N. Y. App. Div. 250, 78 N. Y. Suppl. 91, affirming 37 Misc. 236, 75 N. Y. Suppl. 251. See, however, *In re Clark*, 29 N. Y. St. 650, 9 N. Y. Suppl. 444, 2 Con. Surv. 183. See also *Gilbertson v. Oliver*, 129 Iowa 568, 4 L. R. A. N. S. 953.

**The Massachusetts Mortgage.** The testator was a resident of New Hampshire and the court holds that certain promissory notes belonging to him secured by mortgage on real estate in Massachusetts are subject to tax in Massachusetts. The court notes that in Massachusetts the mortgagee takes not merely a lien upon the land, but he holds the legal title subject to the right of redemption and that the interest of the mortgagee is subject to taxation under the Massachusetts statute; that while for general purposes the interest of the mortgagee is treated as personal property it has a local situs and carries with it ownership of the land until it is redeemed by the payment of the debt. The court holds, therefore, that these notes and mortgages are property within the jurisdiction of Massachusetts within the meaning of the Massachusetts statute of 1909, chapter 527, section one, although they were held by the testator at his domicile in New Hampshire at the time of his death. *Kinney v. Stevens*, 207 Mass. 368, 93 N. E. 586.



\* *In re Merriam*, 147 Mich. 630, 9 L. R. A. N. S. 1104, 111 N. W. 196, 14 Detroit Leg. N. 6, 118 Am. St. Rep. 561. The court distinguishes the case at bar from the *Matter of Bronson*, 150 N. Y. 1, which held that bonds and certificates of stock in a New York corporation owned by and in possession of a non-resident, at his domicile out of the state, at the time of his death, were not subject to taxation. In the case at bar there was a credit secured by a mortgage on the lands in Michigan and the evidence of indebtedness, namely the mortgage was in Michigan. The court refuses to follow *Matter of Preston*, 75 N. Y. App. Div. 250.

<sup>4</sup> *Callahan v. Woodbridge*, 171 Mass. 595, 599 51 N. E. 176 (where the court did not pass on the question). Cases like *Blackstone v. Miller*, 188 U. S. 189, 23 S. Ct. 277, 47 L. Ed. 439, would seem to lend countenance to this view.

### **Sec. 220. Partnership Interests.**

Under the Pennsylvania doctrine that the inheritance tax is a tax on property, it is held that the interest of a non-resident partner in a partnership doing business in Pennsylvania is subject to tax there.

*In re Small*, 151 Pa. St. 1, 15, 25 A. 23, 30 Wkly. Notes Cas. 521. *In re Small* 11 Pa. Co. Ct. 1.

### **Sec. 221. Interest in Real Estate Trust Association.**

A note of a real estate trust association may be such an equitable interest in the real estate as to be taxable in the state where the land lies.

*Kinney v. Stevens*, 207 Mass. 368, 371, 93 N. E. 586.

## CHAPTER XXXI.

### BENEFICIAL INTERESTS TAXED.

- § 222. All Interests Embraced Unless Specifically Exempted.
- § 223. "To any Person" May Include Several.
- § 224. Assignment by Legatee.
- § 225. Disclaimer.
- § 226. Intestacy.
- § 227. What is a Life Estate.
- § 228. What Life Estates Taxable.
- § 229. Principal or Income of Life Estates.
- § 230. Annuities.
- § 231. Remainders.
- § 232. Vested Remainders.
- § 233. Contingent Remainders.
- § 234. Defeasible or Unascertainable Interests.
- § 235. Interests under Trusts.
- § 236. Bequest to Creditor.
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- § 238. Direction to Fulfill Prior Obligation of Decedent.

#### Sec. 222. All Interests Embraced unless Specially Exempted.

The inheritance taxes usually embrace every kind of interest in the estate of a decedent.

*Att. Gen. v. Pierce*, 59 N. C. 240.

The terms of the Pennsylvania statute of 1826 were comprehensive enough to include every interest which could pass, whether in possession or remainder. *Commonwealth v. Smith*, 20 Pa. St. (8 Harris) 100.

#### Sec. 223. "To any Person" may Include Several.

The words in the Iowa inheritance tax law of 1896 provide a tax on property which shall pass "to any person." The phrase "to any person" does not necessarily mean one person only, but will include more than one when that is required to give the statute the effect it was intended to have.

*McGhee v. State*, 105 Iowa 9, 74 N. W. 695.

#### Sec. 224. Assignment by Legatee.

An assignment by the beneficiary cannot affect the tax.

*Harrison v. Johnston*, 109 Tenn. 245, 70 S. W. 414, 417.

The succession tax cannot be fixed at the rate as in the case of a bequest to the assignee but must be fixed at the rate as in the case of a bequest to the original legatee, as the assignee did not take through the will. *In re Cook*, 187 N. Y. 253, 259, 79 N. E. 991, reversing 114 N. Y. App. Div. 718, 99 N. Y. Suppl. 1049.

Where collateral remaindermen assigned to a lineal life tenant the court was divided on the question as to who should pay the collateral inheritance tax. The majority is of opinion that the whole of it should be paid by the life tenant, on the ground that the life tenant and remainder by virtue of these transfers became vested in the same person, and there was a merger of the two estates into one fee simple estate in her and that she is taxable upon the value of the remainder which entered into the merger. *Harrison v. Johnston*, 109 Tenn. 245, 70 S. W. 414, 417.

**Embezzlement by Executor.** Where one of the executors previous to the death of the testator had so invested the testator's property that it was worthless and then on his death destroyed his will, one of the legatees by threats of criminal prosecution obtained payment of her legacy from the executor, at the same time assigning the legacy and all her interest in the same to the executor. The legacy was paid with the individual property of the executor. The legacy was two thousand dollars and the total assets of the estate of the testator amounted to less than eight hundred dollars. The court holds that no transfer tax can be levied on this legacy, as the legatee never received any property from the estate and has in fact assigned all her rights against the estate. *In re Weed*, 10 Misc. Rep. 628, 32 N. Y. Suppl. 777. See further, *ante*, s. 147.

### Sec. 225. Disclaimer.

Disclaimer by the beneficiaries may prevent the imposition of a tax on them.

*In re Stone*, 132 Iowa 136, 109 N. W. 455. See further, however, *ante*, s. 153.

### Sec. 226. Intestacy.

Where property passes by intestacy the interests of the heirs may be in part subject to tax and in part not.

*Dow v. Abbott*, 197 Mass. 283, 288, 84 N. E. 96.

### Sec. 227. What is a Life Interest.

Life interests have been created by a bequest over of "that may remain,"<sup>1</sup> by a bequest of income during the life of the beneficiary, or so long as she shall remain unmarried,<sup>2</sup> or until her marriage or death unmarried,<sup>3</sup> or where a fee was not created under the rule in Shelley's case.<sup>4</sup>

<sup>1</sup> *In re Cager*, 111 N. Y. 343, 19 N. Y. St. 497, 18 N. E. 866, affirming 46 Hun 657.

<sup>2</sup> *In re Wolf*, 48 Ohio Wkly. L. Bul. 211.

<sup>3</sup> *In re Plum*, 37 Misc. Rep. 466, 75 N. Y. Suppl. 940.

<sup>4</sup> *In re Belcher*, 211 Pa. St. 615, 61 A. 252.

## Sec. 228. What Life Estates Taxable.

The life tenant is subject to tax as a legatee,<sup>1</sup> except possibly in case of a contingent life estate.<sup>2</sup> Under the Illinois statute of 1895 the life estate is exempt only when the remainder following its expiration is to the collateral heir or a stranger.<sup>3</sup>

<sup>1</sup> *In re Wolf*, 48 Ohio Wkly. L. Bul. 211. *Fitzgerald v. Rhode Island Hospital Trust Co.*, 24 R. I. 59, 52 Atl. 814 (under the federal statute of 1898). See *In re Cager*, 111 N. Y. 343, 19 N. Y. St. 497, 18 N. E. 866, affirming 46 Hun 657.

Where a testator died in December, 1901, bequeathing certain property in trust to pay the income to the son for life, the life estate of the son became vested on the death of the testator and was therefore subject to the inheritance tax. *Westhus v. St. Louis Union Trust Co.*, 164 Fed. 795, 90 C. C. A. 441, 168 Fed. 617.

When the testator gives the beneficial use of his property for a limited time to one person, after which the *corpus* of the estate goes to another, it would not be claimed that the right of each legatee is not subject to taxation. The fact that both bequests are to the same individual should not change the result. To hold otherwise would defeat the entire purpose of the statute, which can only be given effect by insisting that when the amount actually paid exceeds the exemption a tax based on that amount is then due. *State v. Probate Court*, 112 Minn. 279, 128 N. W. 18, 20.

<sup>2</sup> Where a devise is made to two for life and to the survivor of them, the remainder to the surviving children of M. and remainder in fee to the children of A. and W. if the latter have issue, the life estates of the first takers are alone taxable since it is impossible to tell which of the children of M. will take the second life estate; nor can it be known into what number of shares the estate in remainder will be divided. *In re Eldridge*, 29 Misc. Rep. 734, 62 N. Y. Suppl. 1026.

<sup>3</sup> *Ayers v. Chicago Title & Trust Co.*, 187 Ill. 42, 56, 58 N. E. 318.

[Appraisal of life estates, see *post*, ss. 343-345.]

## Sec. 229. Principal or Income of Life Estates.

Taxes on life interests may be chargeable against the principal,<sup>1</sup> or against the income,<sup>2</sup> payable only as the income is paid.<sup>3</sup> This is so although the legacy was intended for the maintenance of the life tenant who had and has no other means of support, and although the tax was paid by the executor before he transferred the fund to the trustee.<sup>4</sup> The life tenant, although exempt from taxation, has no redress where his income is reduced by the deduction of the tax from the principal.<sup>5</sup>

<sup>1</sup> *Minot v. Winthrop*, 162 Mass. 113, 125, 38 N. E. 512, 26 L. R. A. 259. *In re Bass*, 57 Misc. 531, 109 N. Y. Suppl. 1084.

Where personal property was given to a life tenant the succession taxes assessed against the net value of the property as a whole are chargeable to principal. *Bishop v. Bishop*, 81 Conn. 509, 71 A. 583.

<sup>2</sup> *State v. Probate Court*, 100 Minn. 192, 196, 197, 110 N. W. 865. *In re Johnson*, 6 Dem. Surr. 146.

Succession duties under the United States inheritance tax of 1864 on life tenants fall on the income of the fund even where the property is left by will in trust "to receive and collect the income and after deducting all needful and proper costs, charges and expenses, to pay the residue of said income" to the cestui for life. The court holds that the costs, charges and expenses spoken of by the will, which was drafted before the passage of the inheritance tax, are such as are incidental to the management of the trust property, and the receipt, collection and disbursement of the income cannot in any sense include the payment of the tax by law imposed upon the life tenants and beneficial interests in the property. *Sohier v. Eldredge*, 103 Mass. 345.

<sup>3</sup> *State v. Probate Court*, 100 Minn. 192, 110 N. W. 865. *State v. Probate Court*, 112 Minn. 279, 128 N. W. 18, 20.

A recent Minnesota will provided that if a certain grandson, E. B., survived the testator his estate should go to trustees for the grandson, the principal to be paid the grandson in instalments if he should reach various ages; and if he failed to reach the age designated the trustees should pay the balance in their hands to certain persons and charitable institutions designated in the will. The payment of income is limited in any event to a given number of years; hence, the legacy has none of the elements of a life estate, and the present value of the right to receive the income for a limited number of years cannot be ascertained, for the value depends upon the contingency of his living until the limitation expires. It follows, therefore, that a tax on the income will accrue and become payable as the time arrives for the payment to the beneficiary and that it is the duty of the trustee to deduct the tax from the amount of any instalment of income to which he becomes entitled and pay the amount thereof to the proper officer. *State v. Probate Court*, 100 Minn. 192, 196, 197, 110 N. W. 865.

<sup>4</sup> *In re Christian*, 2 Pa. Co. Ct. 91, 18 Wkly. Notes Cas. 88.

<sup>5</sup> Mass. St. 1891, c. 425, s. 1, provides that the tax shall be deducted from the principal sum and paid over to the treasurer. Where ten thousand dollars is given in trust for a life tenant, who is exempt from taxation, and the tax diminishes the principal below ten thousand dollars and reduces the income proportionately, there is no warrant for taking any part of the principal of the trust fund or of the estate generally to make up the loss of the life tenant. *Minot v. Winthrop*, 162 Mass. 113, 38 N. E. 512, 26 L. R. A. 259.

## Sec. 230. Annuities.

Annuities are commonly subject to the inheritance tax,<sup>1</sup> and the tax may be collected out of the first payment though the tax exhausts that payment;<sup>2</sup> but where the amount of the annuity is contingent, the tax should be paid on each payment as it is made.<sup>3</sup>

<sup>1</sup> *In re Hutchison*, 105 N. Y. App. Div. 487, 94 N. Y. Suppl. 354.

The testator provided that the trustee under a trust created by him should pay from the trust, including accumulations of income as well as the *corpus*, at the rate of \$14,000 per year to certain persons named; and the court holds that this is a bequest of an annuity and is so taxable, and not as a bequest of income under

the statute of 1898, section 29. *Peck v. Kinney*, 128 Fed. 313, reversed 143 Fed. 76, 74 C. C. A. 270.

**Annuity for Care.** The direction by will that certain persons shall receive \$75 per month for caring for the brother of the testatrix is subject to a tax at the rate of five per cent. *In re Eaton*, 55 Misc. 472, 106 N. Y. Suppl. 682.

**Conditional Annuity.** A bequest of an annuity to a church on the condition of ringing the bell for one hour on a certain day annually, is subject to the collateral inheritance tax. *In re Gilpin*, 14 Pa. Co. Ct. 122, 3 Pa. Dist. R. 711.

**Annuity Ceasing on Testator's Death.** Where the testator sells a promissory note of doubtful value on condition the buyer would pay him interest as long as the testator lives, this is not subject to the inheritance tax. *In re Gorman*, 3 Pa. Co. Ct. 550.

<sup>1</sup> *Minot v. Winthrop*, 162 Mass. 113, 126, 26 L. R. A. 259.

<sup>2</sup> Where the will gives an annuity of three hundred dollars to be paid out of the income or out of the principal if necessary, the inheritance tax should not be assessed upon the whole sum, as the bequest is contingent upon the legatee living long enough to exhaust it all. Therefore, the tax is to be assessed only upon the annual payments as they fall due. *In re Crompton*, 10 Pa. Co. Ct. 443, 48 Leg. Int. 452, 29 Wkly. Notes Cas. 36.

Where the will directed the executors to purchase bonds of such an amount that the interest would be sufficient to pay the wife eight thousand dollars a year the court says that this is not an annuity the present value of which can be fixed. Here the legacy grows out of the estate each quarter and on the failure of sufficient interest part of the principal may be taken, but even that part adheres to the estate, grows out of it and cannot be separated from it. The estate is therefore a trust fund in the hands of the executors for the payment of the quarterly instalments of her legacy. It is the case of trustee and beneficiary, and not debtor and creditor. It is therefore clear that until received by the widow each quarter the legacy remains merged in the estate as a part thereof, that the taxes paid by the estate are all that can be lawfully exacted, and that she cannot be taxed on any part of her legacy until after its receipt by her. *Chisholm v. Shields*, 67 Ohio St. 374, 66 N. E. 93.

[Annuities, see further, *post*, ss. 306, 342.]

## Sec. 231. Remainders.

Remainder interests are commonly subject to tax<sup>1</sup> although not expressly covered by the statute.<sup>2</sup> The remainder interest is not subject to a separate tax as an interest under the estate of the life tenant.<sup>3</sup> If a remainder vests as intestate estate it is taxable only if it passes to a taxable heir.<sup>4</sup> Remainders whether vested or contingent are "estates in expectation" within the Illinois statute.<sup>5</sup>

<sup>1</sup> *Ayers v. Chicago Title & Trust Co.*, 187 Ill. 42, 55, 58 N. E. 318 (remainder to lineals). *Billings v. People*, 189 Ill. 472, 59 L. R. A. 807. *State v. Probate Court*, 100 Minn. 192, 198, 110 N. W. 865 (distribution only after paying tax). *Appeal of Commonwealth*, 127 Pa. St. 435, 439, 17 A. 1094.

The New York decisions are not of value in construing the Illinois statute as to the taxation of remainder interests. "One of the main differences between

the Illinois act and the New York act is that the former taxes all successions excepting life estates and terms for years mentioned in s. 2, while the latter taxes only successions to collaterals or strangers in blood." *In re Kingman*, 220 Ill. 563, 77 N. E. 135. See further, *post*, ss. 346, 347, 383.

<sup>1</sup> *Attorney General v. Pierce*, 59 N. C. 240.

<sup>2</sup> *In re Whitney*, 124 N. Y. Suppl. 909.

<sup>3</sup> *Dow v. Abbott*, 197 Mass. 283, 286.

<sup>4</sup> *Ayers v. Chicago Title & Trust Co.*, 187 Ill. 42, 58 N. E. 318.

## Sec. 232. Vested Remainders.

Vested remainders are almost universally taxable.

*In re Vinot*, 7 N. Y. Suppl. 517. *Title Guarantee & Trust Co. v. Ward*, 164 Fed. 459. *Chouteau v. Allen*, 95 C. C. A. 582, 170 Fed. 412, relying upon *Westhus v. Union Trust Co.*, 164 Fed. 795, 168 Fed. 617. *In re Sherman*, 30 Misc. Rep. 547, 63 N. Y. Supp. 957.

## Sec. 233. Contingent Remainders.

Contingent remainders may be and are commonly subject to taxation under state statutes,<sup>1</sup> even when arising by appointment after the death of the testator.<sup>2</sup> Contingent interests under the early New York statutes were not presently taxable until they had vested,<sup>3</sup> but were made taxable as of the death of the testator by the act of 1899.<sup>4</sup> The federal tax of 1898 left them free of tax entirely.<sup>5</sup>

<sup>1</sup> *State v. Pabst*, 139 Wis. 561, 589, 121 N. W. 351.

**Vested and Contingent Interests.** The language in *Ayers v. Chicago Title & Trust Co.*, 187 Ill. 42, 58 N. E. 318, to the effect that whether or not the remainders were vested or contingent was not material, is only dictum and the court declines to follow it in *People v. McCormick*, 208 Ill. 437, 445, 70 N. E. 350, 64 L. R. A. 775.

See further, ss. 300, 335, 346, 383.

<sup>2</sup> *Howe v. Howe*, 179 Mass. 546, 551, 55 L. R. A. 626.

<sup>3</sup> *In re Lefever*, 5 Dem. Surr. (N. Y.) 184. *In re Clark*, 1 Con. Surr. 431, 22 N. Y. St. 354, 5 N. Y. Suppl. 199. *In re Clarke*, 39 Misc. Rep. 73, 78 N. Y. Suppl. 869. *In re Roosevelt*, 143 N. Y. 120, 38 N. E. 281, 25 L. R. A. 695, affirming 27 N. Y. Suppl. 741, 76 Hun 257. *In re Hoffman*, 143 N. Y. 327, 38 N. E. 311, modifying 76 Hun 399, 5 Misc. 439.

Where a remainder in a trust estate was given to such persons named as might be living at the successive termination of each trust these remainders are not liable to taxation until the termination of each trust, as it cannot until then be determined whether the trust fund would pass to persons exempt from taxation or to persons taxable. The court distinguishes the *Matter of Stewart*, 131 N. Y. 277, which case does decide that contingent interests although vesting in possession at a future day may be at once valued and assessed. And the court says that it may possibly be that where the only contingency of the future is upon which of the several named persons or classes of persons, all of whom are liable

to taxation, the beneficial interest will ultimately devolve, the appraisal and assessment need not be postponed. Yet where the contingency touches the taxable character of the succession, where it is only in the chance of uncertain events that the beneficial interests will finally alight where they will be taxable at all, a delay until the contingency is solved is both just and necessary.

Where remainders in trust estates were left to such of certain persons named as might survive the termination of the trust estates and one of these persons named died before the termination of the trust estate, his estate was not subject to taxation. He never took anything beneficial under the will and his estate can take nothing. It was never intended by the law to tax a theory having no real substance behind it. What passed was rather a theoretical possibility than a tangible reality. *In re Curtis*, 142 N. Y. 219, 36 N. E. 887, affirming 73 Hun 185, 56 N. Y. St. 113, 25 N. Y. Suppl. 909.

<sup>4</sup> *In re Post*, 85 N. Y. App. Div. 611, 82 N. Y. Suppl. 1079, affirming 40 N. Y. Suppl. 1144, 64 N. Y. Suppl. 369. *Matter of Vanderbilt*, 172 N. Y. 69, 64 N. E. 782. *Matter of Bres*, 172 N. Y. 609, 64 N. E. 958. *In re Tracy*, 179 N. Y. 501, 508, 72 N. E. 519, reversing 87 N. Y. App. Div. 215. *In re Le Brun*, 39 Misc. Rep. 516, 80 N. Y. Suppl. 486. *In re Burgess*, 130 N. Y. Suppl. 686 (tax at highest rate possible in view of possible contingencies). *Contra*, *In re Howell*, 34 Misc. Rep. 432, 69 N. Y. Suppl. 1016.

<sup>5</sup> *Vanderbilt v. Eidman*, 196 U. S. 480, 501, 25 S. Ct. 331, 49 L. Ed. 563, 138 Fed. 1006, 70 C. C. A. 683, reversing 121 Fed. 590. *Herold v. Shanley*, 146 Fed. 20, 76 C. C. A. 478, affirming 141 Fed. 423 (after death or marriage of another). *Heberton v. McClain*, 135 Fed. 226. *Brown v. Kinney*, 128 Fed. 310, reversed 137 Fed. 1018.

The Spanish War revenue statute of 1898 did not impose duties upon legacies which were vested merely within the technical meaning of that term, but only upon legacies which were vested in actual possession and enjoyment. *Fidelity Trust Co. v. United States*, 45 Ct. Cl. 362. (U. S. Ct. Cl. 1910.)

## Sec. 234. Defeasible or Unascertainable Interests.

Defeasible interests are subject to tax as soon as the interest of the beneficiary can be determined,<sup>1</sup> but the tax must be postponed where the interests are not presently ascertainable.<sup>2</sup>

<sup>1</sup> *State v. Probate Court*, 112 Minn. 279, 128 N. W. 18, 20 (tax payable when beneficiary takes possession). Where a will provides that beneficiaries may take property and its income subject to annual payments to the widow unless she exercise an option to take a portion of the estate in lieu thereof, and to similar payments for the support of the child during minority, there is nothing in these conditions which postpones their right to the property or income thereof from the time of death. The law provides means of calculating the value of the interest of the widow and the child and hence the fair market value of the remainder of the estate and the other interests was ascertainable. *State v. Pabst*, 139 Wis. 561, 588, 121 N. W. 351.

<sup>2</sup> When the basis of the tax, the rate and the exemption if any cannot be fixed, the tax itself cannot be fixed. No other course is left open in the practical administration of the statute than to postpone the assessing and collecting of the



tax upon such remote contingent interests as are incapable of valuation and as to which the rate and the exemptions cannot be determined. *People v. McCormick*, 208 Ill. 437, 70 N. E. 350, 64 L. R. A. 775.

Where the testator devised to her brother the use of her personal property with the right to use as much of the principal as was necessary for his maintenance, no transfer tax can be assessed upon the remainder, as it is impracticable to appraise it until it is known what property will pass in remainder. *In re Babcock*, 81 N. Y. App. Div. 645, 81 N. Y. Suppl. 1117, affirming 37 Misc. Rep. 445, 75 N. Y. Suppl. 926.

See further, *post*, ss. 300, 335, 382, 383.

### Sec. 235. Interests under Trusts.

Interests under a trust deed which has become absolute during the grantor's life are not taxable on his death.<sup>1</sup> In considering the taxation of interests in trust, the relationship to the testator of the cestui and not of the trustee is the test,<sup>2</sup> although the tax itself may be assessed against the trustee.<sup>3</sup> Where the law provides that if the legacy or property be not in money it shall be collected from the persons entitled, interests under a trust fund must be collected from the cestuis themselves.<sup>4</sup>

<sup>1</sup> *In re Pierce*, 132 N. Y. App. Div. 465, 116 N. Y. Suppl. 816, reversing 60 Mich. 25, 112 N. Y. Suppl. 594. See *In re Ogsbury*, 7 N. Y. App. Div. 71, 39 N. Y. Suppl. 978. See further, *ante*, s. 98.

<sup>2</sup> Where a legacy is given to the husband of the daughter evidently as trustee for the use of his children, it is not liable to a collateral inheritance tax. *In re Morris* (Orph. Ct.), 1 Pa. Dist. R. 818.

Where an executor without authority purchases land in her own name the property is impressed with a trust in favor of the remaindermen, and on her death no inheritance tax should be levied, as the fact that she took title in her own name did not make the property hers. *In re Wheeler*, 115 N. Y. App. Div. 616, 100 N. Y. Suppl. 1044.

<sup>3</sup> *Tyson v. State*, 28 Md. 577.

A legacy to an executor individually under a contract with him to use the money for another creates a valid trust within the exemptions of the statute and the executor would therefore not be liable for the tax. *In re Farley*, 15 N. Y. St. Rep. 727.

<sup>4</sup> Where a trust fund is left for the benefit of one person for life with remainder to another, what is transferred to the life tenant and to the remaindermen is simply a right to receive a certain sum of money and none of the property or estate left by the testator. Each gets a right under the will from which there can be no deduction. Collection of a tax on these interests must therefore be made from the beneficiaries themselves. *In re Hoyt*, 37 Misc. Rep. 720, 76 N. Y. Suppl. 504, citing *In re McMahon*, 28 Misc. Rep. 697, 60 N. Y. Suppl. 64. *In re Clark*, 1 Con. Surr. 431, 5 N. Y. Suppl. 199.

### Sec. 236. Bequest to Creditor.

A bequest to a creditor of the decedent is exempt from the inheritance tax up to the amount of the debt.

*In re Quin* (1880), 13 Phila. (Pa.) 340.

Where a bequest is made to the foreman of the testator of four thousand dollars on condition he should accept it in full of all claims, and it appeared that the amount of the legatee's claim for services was in excess of the sum bequeathed, the legacy is not a gift and is not subject to the inheritance tax. *In re Underhill*, 20 N. Y. Suppl. 134, 2 Con. Surr. 262.

The testator by his will gave to H. all money which might become due and payable at his decease, on account of his membership in a certain masonic aid association. The testator had taken out this membership to secure an indebtedness to H. The court holds that while H. may be entitled to receive money by virtue of the will he does not get it as a gift but as payment of a debt, and the words used accomplish no more than the usual general direction in wills to pay debts and funeral expenses. *In re Rogers*, 10 N. Y. Suppl. 22, 2 Con. Surr. 198.

As to consideration, see *ante*, Chapter XX.

### Sec. 237. Bequest to Debtor.

A bequest to a debtor of the testator is properly taxable.

*In re Wood*, 40 Misc. Rep. 155, 81 N. Y. Suppl. 511, holding that a bequest of a debt is "property." Ky. St. 1906, c. 22, makes no exception in favor of legatees who may be indebted to the estate. *Leavell v. Arnold*, 131 Ky. 426, 115 S. W. 232.

Where a bequest of the residue of an estate includes a note made by the residuary legatee, the legatee must either accept the benefit provided by the will under the condition of assuming with it the burden imposed by law, or he may reject it. If he elects to reject the legacy the legacy would go as in case of intestacy. In that event the next of kin could sue upon the note. The tax should properly include the value of this note. *In re Tuigg*, 15 N. Y. Suppl. 548, 2 Con. Surr. 633, following *Tyson's Appeal*, 10 Pa. St. 220.

Where the testator was the holder of certain debenture bonds of a corporation and bequeathed these bonds to the corporation, it was contended that no assessment could be made upon this legacy, as such a gift only released to a debtor evidences of his debt held by his creditor. The court replies, however, that the debenture bonds in question were the property of the testator and that when he bequeathed them to the corporation the property passed from him to it; that it might cancel the bonds or it might properly transfer them to any one who might be willing to pay their value and that the tax was properly imposed upon them. *In re Rothschild*, 72 N. J. Eq. 425, 65 A. 1118, affirming 71 N. J. Eq. 210.

See further, *post*, s. 340.

### Sec. 238. Direction to Fulfill Prior Obligation of Decedent.

A direction in a will as to the carrying out of an obligation of the testator does not constitute a gift by will subject to taxation.

A husband signed an agreement to pay an annuity through a trustee to the wife, and by his will he created a trust in his executors to continue the annuity in case she refused a gross sum allowed her in the will. The court holds that this direction as to the trust in the will is not taxable, as it is no transfer and confers no benefit upon the widow. It is simply a direction of the testator as to the manner in which his estate shall be administered. *In re Daniell*, 40 Misc. Rep. 329, 81 N. Y. Suppl. 1033.

## CHAPTER XXXII.

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### EXEMPTIONS IN GENERAL.

- § 239. Validity.
- § 240. Validity of Tax on Whole Estate which Exceeds the Exemption.
- § 241. Construction.
- § 242. No Implied Exemptions.
- § 243. Whether Based on Estates of Beneficiaries or of Decedents.
- § 244. Whether Calculated on Whole Estate or on Portion within State.
- § 245. Real as well as Personal Property Considered.
- § 246. Amounts Reckoned without Deduction for Tax or Expenses.
- § 247. Amounts Reckoned with Discount for Delay in Payment.
- § 248. When Legacy Payable in Instalments.
- § 249. In Case of Progressive Rates.
- § 250. Effect of General Tax Exemptions.
- § 251. Of Persons Exempt under General Law.
- § 252. Testing Status of Corporation. — When Exempt by General Law.
- § 253. Exemption of Property Otherwise Taxed.
- § 254. Interests under Powers.
- § 255. Remainder may be Liable Although Prior Estate Exempt.
- § 256. "Persons" Includes Corporations.
- § 257. Foreign Corporations.
- § 258. Gift to Foreign Corporation for Domestic Use.
- § 259. Corporation Chartered in more than one State.
- § 260. Effect of Use Made of Funds.
- § 261. Special Exemptions.

#### Sec. 239. Validity.

Exemptions,<sup>1</sup> although liberal in amount, have been almost universally upheld as within the legislative power to classify the subjects of taxation,<sup>2</sup> although the exemption is greater to one class than to another,<sup>3</sup> as there is as much authority to make exemptions from this tax as from any other.<sup>4</sup> The fact that the expense of administering small estates is proportionally greater than large ones has often been considered.<sup>5</sup> Exemptions have been upset as violating the rule of uniformity, however, under the peculiar wording of certain constitutions.<sup>6</sup>

<sup>1</sup>*In re Wilmerding*, 117 Cal. 281, 49 P. 181. *Booth v. Commonwealth*, 130 Ky. 88, 113 S. W. 61 (\$500). *Thompson v. Kidder*, 74 N. H. 89, 97, 65 A. 392. *State*

v. *Guilbert*, 70 Ohio St. 229, 255, 71 N. E. 636. *State v. Alston*, 94 Tenn. 674 (\$250). *In re Hickok*, 78 Vt. 259, 265, 62 A. 724 (\$2,100). *Magoun v. Illinois Trust & Savings Bank*, 170 U. S. 283, 287.

**Reason for Rule.** It was contended that the Ohio act was not uniform in that it exempts from its operation all inheritances which do not exceed \$3,000 in value and imposes a burden on such as are above that sum. The court says: "We think there are two answers to this objection. The person who inherits six thousand dollars has three thousand exempt; the person who inherits three thousand dollars has three thousand dollars exempt. They are on a perfect equality in that regard. The same reasoning applies where it happens that the smaller inheritance falls below three thousand dollars. As well might it be urged that the law which exempts from execution homesteads of the heads of families of one thousand dollars in value is invalid on the ground of inequality of privilege because one debtor's homestead may not reach one thousand dollars in value while that of another may. It is to be borne in mind that the act does not create a classification of persons for the purpose of imposing a tax on that class. It is not a tax on persons at all. If it is felt more by some than by others this is owing merely to the fact of the differing circumstances which surround the different persons. No person, nor no set of persons, is selected arbitrarily or otherwise for the imposition of burdens or for relieving of burdens." Furthermore, the court holds that as the tax is an excise tax and the authority to impose the tax is conferred by the general grant of legislative power, the selection of the subjects on which the tax will be imposed must be within the legislative competency. To say that the mere fact of inclusion in the one case and exclusion in the other constitutes a reason for holding the law invalid, is to say that no excise tax can be lawfully levied upon any privilege until all privileges on which it would be possible to lay such tax have been included within its terms. If this proposition were established it is difficult to say why it would not invalidate all the excise laws of the state, many of which have been subjected to judicial scrutiny and have been sustained. *State v. Guilbert*, 70 Ohio St. 229, 250, 71 N. E. 636.

An exemption of the estates taken by inheritance valued at less than \$500 is constitutional. "As this tax is not upon property, but upon the right of succession, the constitutional provision that all property shall be taxed according to its value is inapplicable. The right of the legislature to impose an excise tax includes the right to select the subjects upon which it shall be imposed." There is no constitutional requirement that it shall be imposed upon every inheritance and the judgment of the legislature in that respect is not open to review by the courts. It may have considered that the expense of valuation of an estate less than \$500 rendered the exemption wise. *In re Wilmerding's Estate*, 117 Cal. 281, 49 P. 181.

\**Succession of Frigalo*, 123 La. Ann. 71, 48 S. 652 (\$10,000). *Minot v. Winthrop*, 162 Mass. 113, 123, 26 L. R. A. 259 (\$10,000). *Gelsthorpe v. Furnell*, 20 Mont. 299, 51 P. 267, 39 L. R. A. 170 (\$7,500). *Thompson v. Kidder*, 74 N. H. 89, 97, 65 A. 392. *Black v. State*, 113 Wis. 205, 218, 89 N. W. 522, 90 Am. St. Rep. 853 (\$10,000). *Magoun v. Illinois Trust & Savings Bank*, 170 U. S. 283, 18 Sup. Ct. 594, 42 L. Ed. 1037. See further, s. 62, n. 2.

**A Legislative Function.** Although it is true that the amount of the exemption is greater in the Illinois law than in any other, the right to exempt cannot

depend on that as that is a legislative and not a judicial function. *Magoun v. Illinois Trust & Savings Bank*, 170 U. S. 283, 298, 300, 18 Sup. Ct. 594, 42 L. Ed. 1037.

<sup>2</sup> *State v. Clark*, 30 Wash. 439, 71 P. 20, 23 (\$10,000 to lineals). See, also, cases cited under two preceding notes. *Contra, Drew v. Tift*, 79 Minn. 175, 81 N. W. 839, 47 L. R. A. 525, 79 Am. St. Rep. 446 (\$10,000 to lineals and \$5,000 to collaterals void under the wording of the Minnesota constitution that the tax is to be laid on inheritances above a fixed and specified sum).

<sup>3</sup> *Union Trust Co. v. Durfee*, 125 Mich. 487, 84 N. W. 1101, 7 Detroit Leg. N. 597.

<sup>4</sup> *Minot v. Winthrop*, 162 Mass. 113, 124, 26 L. R. A. 259 (Lathrop, J., dissenting). *State v. Alston*, 94 Tenn. 674, 30 S. W. 750, 28 L. R. A. 178.

<sup>5</sup> *State v. Gorman*, 40 Minn. 232, 41 N. W. 948, 2 L. R. A. 701. (Here the statute purported to exact arbitrary probate fees, and the court regarded an exemption of \$2,000 as without justification under the equality requirements of the state constitution.) *Drew v. Tift*, 79 Minn. 175, 81 N. W. 839, 47 L. R. A. 525, 79 Am. St. Rep. 446. (\$10,000 to lineals and \$5,000 to collaterals void under the wording of the Minnesota constitution that the tax is to be laid on inheritances above a fixed and specified sum.) *State v. Ferris*, 53 Ohio St. 314, 41 N. E. 579, 30 L. R. A. 218. *In re Cope*, 191 Pa. St. 1, 43 A. 79, 29 Pittsb. Leg. J. N. S. 379, 45 L. R. A. 316, 71 Am. St. Rep. 749, 44 Wkly. Notes Cas. 89. (This decision is based on the peculiar Pennsylvania theory that the inheritance tax is a property tax and is not of assistance in other jurisdictions.)

[Retroactive law as affecting exemptions, see *ante*, ss. 79, 88.]

## Sec. 240. Validity of Tax on Whole Estate which Exceeds the Exemption.

The tax is commonly held valid, although imposed on the whole inheritance, where it exceeds the exemption,<sup>1</sup> although the contrary result has been reached on the ground that the tax was not uniform unless confined to the excess above the exemption.<sup>2</sup>

<sup>1</sup> *Appeal of Nettleton*, 76 Conn. 235, 241, 56 A. 565 (holding exemption arbitrary and unreasonable but valid). *Gilbertson v. McAuley*, 117 Iowa 522, 91 N. W. 788. *In re Fox*, 154 Mich. 5. *State v. District Court*, 41 Mont. 357, 109 P. 438, 440. *In re Sherwell*, 125 N. Y. 376, 26 N. E. 464, affirming 12 N. Y. Suppl. 200, reversing 11 N. Y. Suppl. 897. *In re McKennan*, 25 S. D. 369, 126 N. W. 611, 616, reversed on rehearing 130 N. W. 33. *State v. Alston*, 94 Tenn. 674, 30 S. W. 750, 28 L. R. A. 178.

<sup>2</sup> *Drew v. Tift*, 79 Minn. 175, 81 N. W. 839, 47 L. R. A. 525, 79 Am. St. Rep. 446. *State v. Basille*, 87 Minn. 500, 92 N. W. 415, 94 Am. St. Rep. 718. *State v. Ferris*, 53 Ohio St. 314, 41 N. E. 579, 30 L. R. A. 218. See *Beals v. State*, 139 Wis. 544, 554, 121 N. W. 347. *State v. Handlin*, (Ark. 1911,) 139 S. W. 1112 (upholding law exempting portion of bequest above \$50,000). See further, s. 62, n. 6.

**Doctrine Stated.** The right or privilege of receiving or succeeding to property is valuable in proportion to the value of the property received. It cannot be consistently said that the right to receive twenty thousand dollars is of no value, and that the right to receive twenty thousand and one dollars is of the value of two hundred dollars and one cent.

Again, he who uses the right or privilege of receiving property of the value of twenty thousand and one dollars and pays therefor a tax of two hundred dollars and one cent, is not equally benefited for the tax paid as he who uses the same right or privilege of receiving property of the value of twenty thousand dollars without paying any tax whatever for the use of such right. *State v. Ferris*, 53 Ohio St. 314, 41 N. E. 579, 30 L. R. A. 218.

### Sec. 241. Construction.

It is often said that exemptions should be strictly construed,<sup>1</sup> especially against an exemption yielding absurd results,<sup>2</sup> but we believe the true rule is that, as the inheritance tax is a special tax, the intention to impose it in any case must be clearly expressed and words of exception should be liberally construed.<sup>3</sup> Charitable bequests, however, should be upheld and given effect whenever possible, and the fact that the statute may exempt these bequests from the payment of the inheritance tax is no reason for departing from or modifying this ancient rule of construction favoring charitable gifts.<sup>4</sup> Exemptions should be given the same construction as similar language in general tax laws.<sup>5</sup> Exemptions, like other tax laws, are prospectively construed.<sup>6</sup>

<sup>1</sup>*In re Bull's Estate*, 153 Cal. 715, 96 P. 366. *State v. N. Y. Meeting of Friends*, 61 N. J. Eq. 620, 48 A. 227. *In re Vineland Historical and Antiquarian Society*, 66 N. J. Eq. 291, 56 A. 1039. *In re Stewart*, 131 N. Y. 274, 281, 30 N. E. 184, 14 L. R. A. 836. *In re Davis*, 98 N. Y. App. Div. 546, 90 N. Y. Suppl. 244. *Barringer v. Cowan*, 55 N. C. 436. *In re Hickok*, 78 Vt. 259, 62 A. 724. See further, *ante*, s. 32.

"Exemption is a matter of grace on the part of the legislature and cannot be claimed beyond the extent to which a law-making body has seen fit to allow it." *In re Timken's Estate*, 158 Cal. 51, 109 P. 608.

<sup>2</sup>*In re Bull*, 153 Cal. 715, 96 P. 366.

<sup>3</sup>*In re Mergentime*, 195 N. Y. 572, 88 N. E. 1125, affirming 129 N. Y. App. Div. 367, 113 N. Y. Suppl. 948. *Matter of Enston*, 113 N. Y. 174, 21 N. E. 87, 3 L. R. A. 464. *Matter of Fayerweather*, 143 N. Y. 114, 38 N. E. 278. *Matter of Harbeck*, 161 N. Y. 211, 55 N. E. 850.

"It is an old familiar rule of the English courts, applicable to all forms of taxation, and particularly special taxes, that the sovereign is bound to express its intention to tax in clear and unambiguous language, and that a liberal construction be given to words of exception confining the operation of duty, . . . though the rule regarding exemptions from general laws imposing taxes may be different." *Per Brown, J.*, in *Eidman v. Martinez*, 184 U. S. 578, 583, 22 Sup. Ct. 515, 46 L. Ed. 697, where the court quotes as sustaining its doctrine *In re Howell*, 147 Pa. St. 164, 23 A. 403. *In re Cager*, 111 N. Y. 343, 18 N. E. 866. *Knowlton v. Moore*, 178 U. S. 41, 20 Sup. Ct. 747, 44 L. Ed. 969.

<sup>4</sup>*In re Graves*, 242 Ill. 23, 89 N. E. 672, 34 A. S. R. 302.

**Charity.** *The exemption clause* in the Iowa inheritance statute is to be liberally construed to permit the benevolent purpose of the exemption. *Morrow v. Smith*, 145 Iowa 514, 124 N. W. 316. *In re Spangler*, 148 Iowa 333, 127 N. W. 625.

<sup>1</sup>*In re Balleis*, 144 N. Y. 132, 134, 38 N. E. 1007, affirming 78 Hun 275.

<sup>2</sup>*Sherrill v. Christ Church*, 121 N. Y. 701, 703, 25 N. E. 50, reversing *In re Van Kleeck*, 55 Hun 472. *Contra*, *Roman Catholic Church v. Niles*, 86 Hun 221, 33 N. Y. Suppl. 243. See *In re Vanderbilt*, 68 N. Y. App. Div. 27, 74 N. Y. Suppl. 450, citing *In re Huntington*, 168 N. Y. 399, 61 N. E. 643.

## Sec. 242. No Implied Exemptions.

Where the law imposes the tax in general terms, only those plainly exempt from it are excluded from its provisions.<sup>1</sup> So it has been held that a "widow" of a son does not include a former wife of a son who had married again;<sup>2</sup> that an exemption of nephews and nieces does not cover grandnieces,<sup>3</sup> or the nephews and nieces of the husband or wife of the decedent.<sup>4</sup> So brothers-in-law and sisters-in-law,<sup>5</sup> or a step-sister,<sup>6</sup> have been held liable to tax where not specifically named as exempt, although half-brothers have been held exempt.<sup>7</sup>

<sup>1</sup>A grandmother is liable to pay the tax, although the act is called a collateral inheritance law, as she is not named as exempt. *McDowell v. Addams*, 45 Pa. St. (9 Wright) 430. A husband claimed that a deduction should be made from the estate of his wife of the exemptions enumerated in the New York statute of things which he would have been entitled to had they existed, but as they did not exist he was nevertheless entitled to receive their assumed cash value in lieu of them, and that accordingly such value is no part of the estate to be transferred under the will and subject to the tax. The court decides that no such exemption should be allowed, as the tax law itself makes no provision for the deduction from the taxable estate of the value of articles which would have been exempted for the use of husband or wife had such articles existed, but which do not in fact exist. *In re Libolt*, 102 N. Y. App. Div. 29, 92 N. Y. Suppl. 175.

<sup>2</sup>*Commonwealth v. Powell*, 51 Pa. St. (1 P. F. Smith) 438.

<sup>3</sup>*In re Bates*, 7 Ohio N. P. 625, 5 Ohio S. & C. P. Dec. 547. *In re Simon*, 7 Ohio N. P. 667, 39 Wkly. L. Bul. 369.

<sup>4</sup>*In re Bates*, 7 Ohio N. P. 625, 5 Ohio S. & C. P. Dec. 547. *In re Wolf*, 48 Ohio Wkly. L. Bul. 211.

<sup>5</sup>*In re Thomson*, 48 Ohio Wkly. L. Bul. 212. *Estate of McDermott*, 48 Ohio Wkly. L. Bul. 211.

**Bequest Back to Family of Original Owner.** Where the husband dies leaving his property to his wife absolutely and on her death the property goes back to the brothers and sisters of the deceased husband the inheritance tax is to be collected, as it is a transfer of property to brothers-in-law and sisters-in-law of the testator. *In re Stephenson*, 48 Ohio Wkly. L. Bul. 212. *In re McDermott*, 48 Ohio Wkly. L. Bul. 211.

<sup>6</sup>*In re Thomson*, 48 Ohio Wkly. L. Bul. 212.

<sup>7</sup>*In re Ormsby*, 7 Ohio N. P. 542, 5 Ohio S. & C. P. Dec. 553.



### Sec. 243. Whether Based on Estates of Beneficiaries or of Decedents.

Exemptions of minimum amounts apply to the whole estate under some statutes,<sup>1</sup> which method of reckoning exemptions is valid,<sup>2</sup> although exemptions may be graded according to the size of the estates of each beneficiary.<sup>3</sup>

<sup>1</sup> *McGhee v. State*, 105 Iowa 9, 74 N. W. 695. *Heriott v. Bacon*, 110 Iowa 342, 81 N. W. 701. The court distinguishes *State v. Hamlin*, 86 Me. 495, 30 A. 76, 25 L. R. A. 632, 41 Am. St. Rep. 569n, as in that state other provisions of the statute unequivocally indicate the opposite result. *Callahan v. Woodbridge*, 171 Mass. 595, 599, 51 N. E. 176. *State v. District Court*, 41 Mont. 357, 109 P. 438, 440. *In re Hoffman*, 143 N. Y. 327, 38 N. E. 311, modifying 76 Hun 399, 5 Misc. 439 (St. 1892). *In re Corbett*, 171 N. Y. 516, 64 N. E. 209, affirming 55 N. Y. App. Div. 124. *In re Costello*, 189 N. Y. 288, 292, 82 N. E. 139, modifying 117 N. Y. App. Div. 807, 103 N. Y. Suppl. 6. *In re Miller*, 5 Dem. Surr. (N. Y.) 132, 45 Hun 244. *In re Taylor*, 6 Misc. Rep. 277, 27 N. Y. Suppl. 232. *In re Flynn*, 30 N. Y. Suppl. 388. *In re Hall*, 88 Hun 68, 68 N. Y. St. Rep. 538, 34 N. Y. Suppl. 616. *In re Birdsall*, 22 Misc. Rep. 180, 49 N. Y. Suppl. 450, 2 Gibbons 293, following *In re Hoffman*, 143 N. Y. 327, 38 N. E. 311. *In re De Graaf*, 24 Misc. Rep. 147, 53 N. Y. Suppl. 591, 2 Gibbons 516. *In re Curtis*, 31 Misc. Rep. 83, 64 N. Y. Suppl. 574 (March, 1900). *In re Rosendahl*, 40 Misc. Rep. 542, 82 N. Y. Suppl. 992. (The court remarks that the cases of *In re Bliss*, 6 N. Y. App. Div. 192, 39 N. Y. Suppl. 875, and *In re Conklin*, 39 Misc. Rep. 771, 80 N. Y. Suppl. 1124, have been reversed in *In re Corbett*, 171 N. Y. 516, 64 N. E. 209, affirming 55 N. Y. App. Div. 124, 67 N. Y. Suppl. 46.) *In re Garland*, 88 N. Y. App. Div. 386, 84 N. Y. Suppl. 630, reversing 40 Misc. 579, 82 N. Y. Suppl. 989. *In re McMurray*, 96 N. Y. App. Div. 128, 89 N. Y. Suppl. 71. *In re Mock*, 113 N. Y. App. Div. 913, 100 N. Y. Suppl. 1130, reversing 49 Misc. 283, 99 N. Y. Suppl. 236, on the authority of *In re Corbett*, 171 N. Y. 516, 64 N. E. 209. *In re Mason*, 69 Misc. 280, 126 N. Y. Suppl. 998. *Contra*, overruled, *In re Skillman*, 66 N. Y. St. Rep. 140, 10 Misc. Rep. 642, 32 N. Y. Suppl. 780. *In re Mixer* (1891), 28 Wkly. Notes Cas. (Pa.) 182, 8 Lanc. L. Rev. 256. *Commonwealth v. Boyle*, 2 Del. Co. Rep. (Pa.) 335. *In re Howell*, 10 Pa. Co. Ct. 232. *In re Mixer*, 10 Pa. Co. Ct. 409. *Dixon v. Ricketts*, 26 Utah 215, 72 P. 947. *Black v. State*, 113 Wis. 205, 213, 89 N. W. 522, 90 Am. St. Rep. 853. See further, *ante*, s. 68.

The New York statute of 1892 altered the pre-existing law and was followed in the act of 1896. *In re Costello*, 189 N. Y. 288, 82 N. E. 139, modifying 117 N. Y. App. Div. 807, 103 N. Y. Suppl. 6.

<sup>2</sup> *Minot v. Winthrop*, 162 Mass. 113, 23, 124. *State v. Alston*, 94 Tenn. 674, 682. *Stellwagen v. Duffee*, 130 Mich. 166, 173, 89 N. W. 728, 8 Detroit Leg. N. 1204.

The fact that the burden of the tax falls on persons who are legatees in estates exceeding \$10,000, or more, under Conn. Gen. Sts. 1902, ss. 2367-2377, is not material to its validity. The court notices the claim that this incidental inequality in the operation of the tax is an arbitrary distinction, but the court says that taxation is necessarily arbitrary; that the arbitrary selection essential

to taxation is controlled by the legislative and not by judicial discretion. The Connecticut constitution did not require that the tax should be uniform or equal and the fact that the stress of the tax may fall on some more than others does not render it void. And this is due to the mere accident of changing circumstances. The law is simply and purely an imposition of an indirect tax or duty and it is within the field where the legislature has absolute discretion. *Appeal of Nettleton*, 76 Conn. 235, 241, 56 A. 565. *Contra*, *State v. Ferris*, 53 Ohio St. 314, 41 N. E. 579, 30 L. R. A. 218; 9 Ohio Cir. Ct. 298. *Black v. State*, 113 Wis. 205, 89 N. W. 522.

<sup>1</sup>*In re Wilmerding's Estate*, 117 Cal. 281, 49 P. 181. *People v. Koenig*, 37 Colo. 283, 85 P. 1129. *Booth v. Commonwealth*, 130 Ky. 88, 113 S. W. 61. *Succession of Abadie*, 118 La. Ann. 708, 43 S. 306. *State v. Hamlin*, 86 Me. 495, 508, 30 A. 76, 41 Am. St. Rep. 569, 25 L. R. A. 632. *Stelhwagen v. Durfee*, 130 Mich. 166, 89 N. W. 728, 8 Detroit Leg. N. 1204. *Neilson v. Russell*, 76 N. J. L. 655, 71 A. 286, reversing 76 N. J. L. 27, 69 A. 476. *In re Cager*, 111 N. Y. 343, 347, 19 N. Y. St. 497, 18 N. E. 866, affirming 46 Hun 657 (St. 1885, c. 483). *In re Howe*, 112 N. Y. 100, 19 N. E. 513, 2 L. R. A. 825, affirming 48 Hun 235. *In re Smith*, 5 Dem. Surr. (N. Y.) 90. *In re Hopkins*, 6 Dem. Surr. 1. *In re McCready*, 6 Dem. Surr. 292. *McVean v. Sheldon*, 48 Hun 163. *In re Thomson*, 48 Ohio Wkly. L. Bul. 212. *Knowlton v. Moore*, 178 U. S. 41, 69, 20 S. Ct. 747, 44 L. Ed. 969. *Contra*, and overruled, 22 Opinions of the Attorney General, 298 (January 5, 1899).

The United States statute of 1898 imposes the duty on the particular legacies or distributive shares and not on the whole personal estate. This appears by the title which describes as subject to taxation "legacies and distributive shares of personal property," and also appears by the opening words of section 29 describing the tax as being upon "any interest which may have been transferred by," etc. The provisions for collection of the tax contained in section 30 of the act confirm the construction that the passing of each legacy or distributive share and not the entire personal estate forms the subject of the tax. *Knowlton v. Moore*, 178 U. S. 41, 67, 20 S. Ct. 747, 44 L. Ed. 969.

The fact that the executor or administrator is required by the statute to pay the tax does not make it a tax against the estate of testator or decedent. "Where it is that the tax is upon the succession, it is computed, not on the aggregate valuation of the whole estate of a decedent considered as a unit for taxation, but on the value of the separate units into which it is divided." *State v. Switzer*, 143 Mo. 287, 45 S. W. 245, quoted with approval in *Booth v. Commonwealth*, 130 Ky. 88, 113 S. W. 61.

## Sec. 244. Whether Calculated on Whole Estate or on Portion within State.

Exemptions should in Massachusetts be calculated only on the portion within the state of the estate of a non-resident, according to a recent decision which reverses the practice of the taxing authorities. The court holds in substance that, in determining the question whether a legatee is exempt under Massachusetts law as receiving less than one thousand dollars, only payments made from

Massachusetts property are to be considered. So where a non-resident dies leaving some property in Massachusetts, a legatee who receives over \$5,000 from the executor from the property outside the state and less than \$1,000 from the Massachusetts property is not taxable in Massachusetts under the act of 1909, which deals only with property within the state.

*Attorney General v. Barney*, 211 Mass. 134, 97 N. E. 750.

The following assessment of an estate of a resident of Massachusetts who died in October, 1911, illustrates the Connecticut practice:—

#### DESCRIPTION OF THE PROPERTY TAXED.

10 shares New York, New Haven & Hartford R. R. Co., 133.....	\$1,330.00
Estate in Connecticut .....	\$1,330.00
Total estate of decedent .....	94,315.95

#### *Lineal:—*

Taxable bequests, gross .....	\$1,330.00
Exemption allowed resident estates of Connecticut passing entirely to lineal beneficiaries is .....	10,000.00
Net exemption to which this estate is entitled is that proportion of the above exemption which the estate in Connecticut bears to the whole estate, 1330/94315, or 1.41 per cent .....	141.00
<hr/>	<hr/>
Taxable estate, net.....	\$1,189.00
Tax rate .....	.01
<hr/>	<hr/>
	\$11.89

I find the amount of the Tax due the State of Connecticut, from the above estate is eleven and 89/100 Dollars (\$11.89), which is payable to the treasurer of this state.

(Signed)

WM. H. CORBIN,  
*Tax Commissioner.*

Hartford, Conn., February 10, 1912.

#### **Sec. 245. Real as well as Personal Property Considered.**

The exemption under the New York statutes should be fixed by the total amount of real and personal property combined, and depends on the statutory definition of "property" in the act.

*In re Fisher*, 96 N. Y. App. Div. 133, 89 N. Y. Suppl. 102. *In re Hallock*, 42 Misc. Rep. 473, 87 N. Y. Suppl. 255.

**Sec. 246. Amounts Reckoned without Deduction for Tax or Expenses.**

The exemptions may be calculated on the amounts at the testator's death and not after deducting the inheritance tax<sup>1</sup> or expenses of administration.<sup>2</sup>

<sup>1</sup>The tax is payable upon the value of the legacy less the exemption, and the amount of the tax is not to be deducted from the legacy and the tax computed upon the balance. *In re Hooper*, 6 Low. D. 560, 4 Ohio N. P. 186 (decided in 1897).

<sup>2</sup>*Callahan v. Woodbridge*, 171 Mass. 595, 599, 51 N. E. 176 (under Mass. St. 1891, c. 425, s. 1, holding that expenses of administration are not to be considered in determining whether the value of the whole estate is above the exemption although for determining on what amount the tax is to be computed expenses must be deducted.) See, however, *post*, Chapter XLI.

**Sec. 247. Amounts Reckoned with Discount for Delay in Payment.**

Bequests of five hundred dollars each to several charitable institutions are exempt, as they are payable at the end of a year from the date of the appointment of the executors, and the cash value therefore is less than five hundred dollars.

*In re Underhill*, 20 N. Y. Suppl. 134, 2 Con. Surr. 262, following *In re Peck*, 9 N. Y. Suppl. 465, 24 Abb. N. Cas. 365, 2 Con. Surr. 201. *Contra*, *In re Bird*, 32 N. Y. St. 899, 11 N. Y. Suppl. 895, 2 Con. Surr. 376.

**Sec. 248. When Legacy Payable in Instalments.**

Where a will provides for the creation of a trust estate and the payment of the principal to him in instalments as he reaches certain designated ages, there is but one legacy to him and but one exemption. Where the exemption has already been deducted from the first instalment of the residue of the estate, which has already been paid to him, there can be no further exemption as to him.

*State v. Probate Court*, 100 Minn. 192, 197, 110 N. W. 865.

*State v. Probate Court*, 112 Minn. 279, 128 N. W. 18, 20.

**Sec. 249. In Case of Progressive Rates.**

Where a progressive rate exists the exemption should be deducted from the first amount subject to the primary rate in each distributive share rather than from the distributive share as a whole.

*State v. Probate Court*, 112 Minn. 279, 128 N. W. 18, 20. The entire amount of each share whether exempt or not is considered for the purpose of fixing the rate

of taxation. The exemption is to be deducted from the first amount subject to tax and the tax fixed on that first amount less the exemptions. *In re Timken's Estate*, 158 Cal. 51, 109 P. 608.

"If the statute exempted \$20,000 (or any other sum) of every estate from taxation," said this court, "it would, in our judgment, be equal and valid, even in imposing a graded tax, as it does." *State v. Ferris*, 9 Ohio Cir. Ct. 298, which language really explains the decision on appeal in *State v. Ferris*, 53 Ohio St. 314.

## Sec. 250. Effect of General Tax Exemptions.

Neither general property exemptions from taxation<sup>1</sup> nor constitutional limitations on exemptions<sup>2</sup> control inheritance taxes.

<sup>1</sup>*Booth v. Commonwealth*, 130 Ky. 88, 113 S. W. 61. *Succession of Kohn*, 115 La. Ann. 71, 38 S. 898. *In re Stanton*, 142 Mich. 491, 105 N. W. 1122, 12 Detroit Leg. N. 829. *In re Knoedler*, 140 N. Y. 377, 35 N. E. 601, affirming 68 Hun 150. *Matter of Whiting*, 150 N. Y. 27, 34 L. R. A. 232, 55 Am. St. Rep. 640. *In re Forrester*, 58 Hun 611, 12 N. Y. Suppl. 774. *In re Kucielski*, 144 N. Y. App. Div. 100, 128 N. Y. Suppl. 768. *In re Finnen*, 196 Pa. St. 72, 46 A. 269. *Miller v. Commonwealth*, 27 Gratt. (Va.) 110, 118. See, however, *In re Kimberly*, 27 N. Y. App. Div. 470, 50 N. Y. Suppl. 586.

The tax imposed by N. Y. St. 1896, c. 908, is a tax on the right of succession and not on property; and therefore it is immaterial that the trust fund passing by will is invested in bonds of the state of New York or incorporated companies liable to taxation on their own capital. *In re Dows*, 167 N. Y. 227, 230, 60 N. E. 439, 52 L. R. A. 433, 88 Am. St. Rep. 608, affirming 60 N. Y. App. Div. 630 (affirmed *sub nomine*, *Orr v. Gilman*, 183 U. S. 278, 22 S. Ct. 213, 46 L. Ed. 196).

"There are three reasons for holding that the legislature intended the tax to be measured by property which it is within the power of the state to tax, and not by property which state policy has selected for purposes of general taxation. One reason is that the statute is adopted, together with a judicial interpretation of the language above quoted, from the state of New York. *Stellwagen v. Wayne Probate Judge*, 130 Mich. 166. And, as interpreted by the courts of New York, the design of the legislature to tax the transfer of everything which it has the power to tax is found in the act. *Matter of Whiting*, 150 N. Y. 27, 34 L. R. A. 232, 55 Am. St. Rep. 640. *Matter of Houdayer*, 150 N. Y. 37, 55 Am. St. Rep. 642, 34 L. R. A. 235. *Matter of Sherman*, 153 N. Y. 1. *Matter of Hellman*, 174 N. Y. 254, 95 Am. St. Rep. 582. See, also, *Blackstone v. Miller*, 188 U. S. 189; *Plummer v. Coler*, 178 U. S. 115. The second reason is that a policy of general taxation, which recognizes, to some extent at least, the rule of universal succession and the theory of taxation of personal property, generally, at the domicile of the owner, is not logically controlling of the interpretation of a statute imposing a tax upon a right of succession or upon a transfer of property which can only be tangible and enforceable — be made effective — in the jurisdiction, and by virtue of the laws and institutions, of the situs of the property. A third reason is that, as a tax upon succession or transfer, uniformity of operation and an equal measure of the tax to the property of residents and non-residents can be, with no other construction, secured. There is property situated within the state, belonging to non-residents, which the state does not tax, generally (*Village of Howell v. Gordon*, 127 Mich. 517; *Baars v. City of Grand*

*Rapids*, 129 Mich. 572), though it might tax it (*Collin v. Hull*, 21 Vt. 152; *New Orleans v. Stempel*, 175 U. S. 309). Property of the same class owned by residents is taxed, generally." *Per* Ostrander, J., in *In re Stanton*, 142 Mich. 491, 105 N. W. 1122, 12 Detroit Leg. N. 829.

"It is very plainly shown in *Plummer v. Coler*, 178 U. S. 115, that property which is not taxable as such may constitutionally be considered under a statute in fixing the amount of an excise tax." *Per* Knowlton, C. J., in *Kingsbury v. Chapin*, 196 Mass. 533, 537, 82 N. E. 700.

<sup>1</sup> *State v. Henderson*, 160 Mo. 190, 217, 60 S. W. 1093. *State v. Guilbert*, 70 Ohio St. 229, 253, overruling on this point *State v. Ferris*, 53 Ohio St. 314, 41 N. E. 579, 30 L. R. A. 218. *In re McKennan*, S. D. 1911, 126 N. W. 611, 615, reversed on other grounds on rehearing, 130 N. W. 33.

**The Pennsylvania Rule.** The Pennsylvania constitution expressly authorizes the legislature to exempt from taxation four specified classes or kinds of property. "This specific delegation of authority to exempt impliedly prohibits express exemption from taxation of any other property, but to place this matter beyond the reach of doubt, it is expressly ordained in section 2, that 'all laws exempting property from taxation other than the property above enumerated shall be void.' These limitations on the power of the legislature mean something. They are plainly intended to secure, as far as possible, uniformity and relative equality of taxation, by prohibiting generally the exemption of a certain part of any recognized class of property, and subjecting the residue to a tax that should be borne uniformly by the entire class, and by guarding against any other device that necessarily or intentionally infringes on the established rules of uniformity and relative equality which, as we have seen, underlie every just system of taxation. In any view that can reasonably be taken of these limitations, it must be manifest to any reflecting mind that the act in question offends against them by undertaking to wholly exempt from taxation the personal property of a very large percentage of decedents' estates, and impose increased and unequal burdens on the residue of the same class of property." *Per* Sterrett, C. J., in *In re Cope*, 191 Pa. St. 1, 21, 43 A. 79, 29 Pittsb. Leg. J. N. S. 379, 45 L. R. A. 316, 71 Am. St. Rep. 749, 44 Wkly. Notes Cas. 89. (This decision is based on the peculiar doctrine that the inheritance tax is a property tax.)

## Sec. 251. Of Persons Exempt under General Law.

Exempting beneficiaries which are by law exempt from taxation is confined to beneficiaries exempt under local law,<sup>1</sup> but may include societies exempt under general law as well as under a special exemption,<sup>2</sup> and has been held void under a constitution requiring a tax on all inheritances above a fixed and certain sum.<sup>3</sup>

<sup>1</sup> *Minot v. Winthrop*, 162 Mass. 113, 126, 26 L. R. A. 259. *Collin v. Trinity College Trustees*, 113 N. Y. 133, 142, 22 N. Y. St. 189, 20 N. E. 864, 3 L. R. A. 206, affirming 49 Hun 278, 17 N. Y. St. 707, 1 N. Y. Suppl. 808.

**The United States** is not exempt as a domestic corporation. *In re Merriam*, 141 N. Y. 479, 484, 36 N. E. 505, affirmed in *United States v. Perkins*, 163 U. S. 625.

<sup>2</sup> *In re Miller*, 5 Dem. Surr. (N. Y.) 132, 45 Hun 244.

<sup>3</sup> *Drew v. Tift*, 79 Minn. 175, 81 N. W. 839, 47 L. R. A. 525, 79 Am. St. Rep. 446.

**Sec. 252. Testing Status of Corporation. — When Exempt by General Law.**

The status of a corporation as subject to the inheritance tax should be decided entirely by its charter and the law governing it, and evidence to show what business it actually does is inadmissible in New York.<sup>1</sup> But in New Jersey it is not enough that it is incorporated under an act for an exempt purpose, or avows itself to be organized for that purpose. An institution claiming exemptions must disclose the objects to which it is bound to devote its property.<sup>2</sup> Where a corporation is organized under a statute which permits incorporation for various objects, some of which would render it exempt from taxation, the obvious test of exemption is not incorporation under an act permitting incorporation for objects that would exempt, but incorporation for objects that entitle to exemption. The corporation is not exempt unless it is actually incorporated for objects which entitle it to be exempt.<sup>3</sup>

The exemption under the New York statute of 1885, of charitable corporations which are exempt by law, is not confined to corporations the property of which is completely exempt, but may apply to a corporation which is exempt from taxation up to a certain valuation in its property, as it is assumed that the corporation will not exceed its corporate powers and take more property than is authorized.<sup>4</sup>

An exemption of charitable and religious societies, the property of which is by law exempt, does not require that the exemption shall only apply when the association holds *all* its property free from yearly taxation. The sole test suggested by the statute is to ascertain whether the legatee is a charitable, educational or religious society whose property, when used exclusively in carrying out the purposes of the association, is exempt from taxation. It is the character of the institution and the purposes it was organized to accomplish and its liability or non-liability to taxation for property devoted to those purposes that determine whether it falls within or without the exception provided in the inheritance tax law.<sup>5</sup> Under the same provision in Massachusetts it appeared that under the Massachusetts statutes there was no general exemption from taxation of property given such societies, but certain property of religious associations, houses of worship and pews and furniture are exempt from taxation. Under them the personal and real property of a religious society is taxable even though the income is used to support religious worship. The commonwealth contended that the exemption clause in the inheritance tax statute should be con-

strued to provide that property passing to charitable, educational or religious societies is to be exempt to the extent to which the property of such societies or institutions is exempt by general laws. But the court finds that the test should depend upon the question whether the institution is one whose property is generally exempt from taxation. In the case at bar the property was bequeathed for a parsonage, and parsonages are not exempt from taxation. But the court holds that this is an accident, that houses of religious worship are the principal property held by religious societies, and that therefore a devise to a religious society is a devise to a society whose property is generally exempt from taxation and is not subject to an inheritance tax.<sup>6</sup> The New York court reached the opposite result, holding that exemption of any building used by a church for public worship did not constitute a general exemption of the church from taxation within the meaning of the collateral inheritance act, and therefore the church is not exempt from taxation upon a legacy of "ten thousand dollars towards the building of a new church."<sup>7</sup>

<sup>1</sup> *In re White*, 118 N. Y. App. Div. 809, 103 N. Y. Suppl. 688.

<sup>2</sup> *In re Vineland Historical and Antiquarian Society*, 66 N. J. Eq. 291, 56 A. 1039.

<sup>3</sup> *In re Rothschild*, 72 N. J. Eq. 425, 65 A. 1118, affirming 71 N. J. Eq. 210.

<sup>4</sup> *In re Vassar*, 127 N. Y. 1, 12, 27 N. E. 394, reversing 58 Hun 378, 12 N. Y. Suppl. 203.

<sup>5</sup> *Carter v. Whitcomb*, 74 N. H. 482, 485, 69 A. 779.

<sup>6</sup> *First Universalist Society v. Bradford*, 185 Mass. 310, 70 N. E. 204.

<sup>7</sup> *Sherrill v. Christ Church*, 121 N. Y. 701, 702, 25 N. E. 50, reversing *In re Van Kleeck*, 55 Hun 472.

### Sec. 253. Exemption of Property otherwise Taxed.

Under the Louisiana act the inheritance tax is not to be enforced when the property donated or inherited shall have borne its just proportion of taxes prior to the death of the decedent. The court holds that "the values which are liable to the inheritance tax are to be arrived at by deducting from the total value of the estate the aggregate amount of the debts and special legacy, and then subtracting from the remainder the value of the property shown to have previously borne its just proportion of tax, this second remainder to be divided in parts representing respectively the taxable inheritances" of the descendants.<sup>1</sup>

Where payment of the debts absorbed the whole amount of the proceeds of the personal property and the balance due had to be made from the proceeds of the realty exempt, as it had paid general



tax to satisfy the legacies, the court holds that there can be no question. The legacy from funds that are not proceeds of property exempt owes a tax. But where there is an exemption, the fact of a sale or other disposition made necessary to the discharge of the legacy does not forfeit the exemption. The character of the property was fixed at the date of the death of the testator and the inheritance tax is due on a legacy not paid from the proceeds of exempt property, but it is not due on a legacy necessarily paid from the proceeds of exempt property under La. St. 1906, c. 109, p. 173.<sup>1</sup>

If the law-maker had intended to include property exempt from taxation he would have said so. Non-taxable bonds cannot be said to have borne their just proportion of taxation, as they are exempt from such a burden. The law-maker evidently referred to property subject to assessment and taxation on which taxes had been paid prior to the time of the devolution of the inheritance. Exemption from taxation is strictly construed and cannot be read into a statute by inference or implication; therefore state and municipal bonds exempt from taxation are subject to the inheritance tax. The court relies on *Plummer v. Coler*, 178 U. S. 115, 20 S. Ct. 829, 44 L. Ed. 998.<sup>2</sup>

<sup>1</sup>*Succession of Abadie*, 118 La. Ann. 708, 43 S. 306.

<sup>2</sup>*Succession of Becker*, 118 La. Ann. 1056, 43 S. 701.

<sup>3</sup>*Succession of Kohn*, 115 La. Ann. 71, 38 S. 898.

### **Sec. 254. Interests under Powers.**

Under a statute taxing transfers under the exercise of a power the exemption is reckoned on the transfer as passing from the donee of the power.

*In re Seaver*, 63 N. Y. App. Div. 283, 71 N. Y. Suppl. 544. See further, *ante*, s. 139 *et seq.*

### **Sec. 255. Remainder may be Liable though Prior Estate Exempt.**

A remainder to collateral kindred whose property or estates are declared to be liable for taxes is subject to taxes although the prior estate is exempt. Each recipient must stand upon his or her own relationship to the person from whom the property comes without reference to the liability or non-liability of the person taking the property before or after him.

*Bailey v. Drane*, 96 Tenn. (12 Pickle) 16, 33 S. W. 573. See *In re Cager*, 111 N. Y. 343, 347, 19 N. Y. St. 497, 18 N. E. 866, affirming 46 Hun 657.

## Sec. 256. "Persons" Includes Corporations.

The word "person" in an inheritance statute includes corporations.

The omission in the Virginia statute of 1867, c. 64, s. 3, of the words "bodies politic and corporate" and of the words "to any other use than to and for the use of the father," etc., cannot be taken as an indication of an intention of the legislature to exempt corporations from this tax. If the word "person" in the act embraces corporations, then these words were useless and unnecessary and were properly omitted, and the court finds that "person" here covers corporations. *Miller v. Commonwealth*, 27 Gratt. (Va.) 110, 116.

## Sec. 257. Foreign Corporations.

It is the general rule in this country that exemptions to charitable<sup>1</sup> or religious<sup>2</sup> corporations are confined to domestic corporations, although the foreign corporation may have a limited right to hold property in the state.<sup>3</sup> A bequest to Bowdoin College, a Maine institution, is not exempt from the Massachusetts inheritance tax, although Bowdoin College was a corporation created by Massachusetts by the statute of 1794 before Maine was separated from Massachusetts. The court holds that nevertheless after the separation it ceased to be an institution incorporated within the state of Massachusetts within the meaning of the Massachusetts statute, and therefore it is subject to tax.<sup>4</sup>

<sup>1</sup> *People v. Western Seamen's Friend Society*, 87 Ill. 246. *In re Speed*, 216 Ill. 23, 74 N. E. 809, 108 Am. St. Rep. 189, affirmed 203 U. S. 553, 27 S. Ct. 171, 51 L. Ed. 314. *In re Crawford*, 148 Iowa 60, 126 N. W. 774. *Minot v. Winthrop*, 162 Mass. 113, 26 L. R. A. 259. *Alfred University v. Hancock*, 69 N. J. Eq. 470, 46 A. 178. *In re Rothschild*, 72 N. J. Eq. 425, 65 A. 1118, affirming 71 N. J. Eq. 210. *In re Gopeill* (N. J. Prerog.), 77 A. 793. *In re McCoskey*, 1 N. Y. Suppl. 782, 22 Abb. N. Cas. 20, 6 Dem. Surr. 438. *Callin v. Trinity*, 113 N. Y. 133, 3 L. R. A. 208n. *In re Prime*, 136 N. Y. 347, 362, 32 N. E. 1091, 18 L. R. A. 713, affirming 64 Hun 50. *Humphreys v. State*, 70 Ohio St. 67, 101 Am. St. 888, 70 N. E. 907, 65 L. R. A. 776, affirming 13 Low. D. 168, 1 C. C. N. S. 1, 14 Cir. D. 238 (although the foreign charitable corporations have agencies in Ohio).

<sup>2</sup> *Minot v. Winthrop*, 162 Mass. 113, 126, 21 L. R. A. 259. *In re Balleis*, 144 N. Y. 132, 38 N. E. 1007, affirming 78 Hun 275. *In re Smith*, 77 Hun 134, 28 N. Y. Suppl. 476. *In re Taylor*, 80 Hun 589, 30 N. Y. Suppl. 582. *In re Fayerweather*, 30 N. Y. Suppl. 273, 31 Abb. N. Cas. 287. See *ante*, s. 60.

<sup>3</sup> The American Baptist Publication Society was empowered by the New York statute to take and hold property in New York state, but the court holds that this right alone does not relieve the respondent from taxation. *In re Wolfe*, 23 Misc. Rep. 439, 52 N. Y. Suppl. 415, 2 Gibbons 446.

The fact that a foreign charitable corporation was given a limited privilege of taking and holding real and personal property in New York did not relieve that corporation from a tax on a legacy due it; that was an enabling statute merely. The corporation remained a foreign corporation as before, but possessing in this

state a privilege granted by that statute. *In re Prime*, 136 N. Y. 347, 363, 32 N. E. 1091, 18 L. R. A. 713, affirming 64 Hun 50.

<sup>4</sup> *Batt v. Stevens*, 209 Mass. 319. The court follows *Rice v. Bradford*, 180 Mass. 545.

### **Sec. 258. Gift to Foreign Corporation for Domestic Use.**

Although a gift is made nominally to a charitable corporation organized under the laws of another state, still where the gift is not to or for the corporation itself, and where the corporation is given no power or authority to take it out of the jurisdiction of the state or to expend it for any other than the local purposes mentioned in the will, it is exempt from the inheritance tax. The court distinguishes between a gift made generally to or for a charitable society organized in another state and a gift made to aid the work of a strictly local charity with which the foreign society may be associated. The court regards it as a trust in which the existence of the trustee is not material.

*In re Crawford*, 148 Iowa 60, 126 N. W. 774.

### **Sec 259. Corporation Chartered in More than one State.**

A corporation incorporated in more than one state may for the purpose of exemptions be treated as a domestic corporation in each state.

Where one charitable corporation has only a single entity but is incorporated in three states theoretically it must be said that there is a distinct entity in each of three states, but the substance is the same in all. It has a single body possessing the franchises and privileges of a domestic corporation in three states. To say that the bequest is to a foreign corporation merely because the testatrix named the place where its principal office is located as Boston, Massachusetts, is to substitute form for substance. *In re Lyon*, 141 N. Y. App. Div. 34, 128 N. Y. Suppl. 1004.

See further, *ante*, s. 212.

### **Sec. 260. Effect of Use Made of Funds.**

The common rule is that an exemption to charitable corporations includes any domestic corporation although the corporation had a right to spend its money outside the state.<sup>1</sup> The courts have attempted in some cases to look beyond this rule and allow exemptions only where it appeared that the domestic beneficiary was to expend the funds received within the state.<sup>2</sup> The New Jersey statute on the other hand refuses the exemption to certain institutions which confine their activities within state lines.<sup>3</sup>

Under the New Hampshire statute of 1905, as amended in 1907, if the gift is absolute it is the use made of the property or fund constituting the gift that determines the exemption, but if it is in trust it is the use made of the income or beneficial interest that governs, for in such case it is that property or interest alone which comes into the hands of the donee for use. And so where bonds are given to churches as trustees, the question is not whether the bonds should be exempt from tax, but whether their income in the hands of the beneficiaries should be exempt.<sup>4</sup>

<sup>1</sup> *Balch v. Shaw*, 174 Mass. 144 (under the act of 1891).

<sup>2</sup> The court holds that a legacy to trustees for the purpose of establishing a certain Latin school in a foreign country is not exempt from taxation under the statute of 1906, chapter 436. The fact that the will authorized the trustees to form a corporation to administer the fund and that the trustees did form a Massachusetts corporation does not alter the case, as the fund vested in the trustees on the death of the testator, and there was no requirement that a corporation should be formed. The gift took effect absolutely in the trustees on the death of the testator. *Pierce v. Stevens*, 205 Mass. 219, 91 N. E. 319. The court distinguishes the case of *Balch v. Shaw*, 174 Mass. 144, where there was no gift to anyone until the corporation was formed.

A legacy to the **New Hampshire Baptist convention** was not subject to the inheritance tax. The convention is authorized by its charter to receive and hold donations and use the same for "the purpose of promoting foreign and domestic missions and the education of indigent and pious young men for the gospel ministry and any other religious charities which they may deem proper." The convention had always confined its work to this state and purposes to ask the legislature to amend its charter so as to prevent its use of funds outside the state. In view of these facts it seems clear that the charity is of substantial benefit to the people of New Hampshire and is therefore exempt from taxation. *Carter v. Story*, (N. H. 1911,) 78 A. 1072.

**The Home Missionary Society** was not entitled to an exemption under the New Hampshire statute of 1905, as it devoted substantially all its funds to the support of charities outside of New Hampshire. The question was whether its charity was of such a character and so administered as to be of any substantial benefit or advantage to the people of New Hampshire, and this was a question of fact to be determined upon competent evidence. *Carter v. Whitcomb*, 74 N. H. 482, 491, 69 A. 779.

**The Woman's Foreign Missionary Society**, the principal object of which is the "evangelization of heathen women," is not a public charity even though there may be heathen women in New Hampshire, as it was found that none of the funds of the society could be used within the state of New Hampshire. "The expenditure of large sums of money for the enlightenment upon religious subjects of the natives of the Antipodes evidently was not one of the objects the legislature intended to encourage, when in 1895 the property of charitable associations 'devoted exclusively to the uses and purposes of public charity' was exempted from taxation, or when in 1905 legacies to such associations 'in this state' were exempted from the inheritance tax." *Carter v. Whitcomb*, 74 N. H. 482, 489, 69 A. 779.

<sup>2</sup>**The New York Yearly Meeting of Friends** is the general governing body of the society of Friends and has primary control over the missionary purposes and general benefactions of such minor bodies as act by its authority. Funds are set apart for the work among the Indians and for the benefit of former slaves in the south. It has missions in Mexico, North Carolina, Palestine and Japan and China. Its membership is not confined to the state of New York. It has meetings organized in Vermont and in Canada, and membership in these meetings is not confined to state lines. The court holds that there is no difference between the methods of these meetings and the methods of the boards of home and foreign missions of the various religious organizations. Therefore, the society of Friends comes clearly within the statutory exemption. *State v. N. Y. Meeting of Friends*, 61 N. J. Eq. 620, 48 A. 227.

**The Union for Ministerial Education**, whose purpose is to assist in educating for the ministry suitable men, is a religious institution; so the **Baptist Education Society**, the object of which is to furnish the means for instruction to young of personal piety, who have a call to the ministry; and the **American Baptist Home Missionary Society**, whose object is to promote the preaching of the gospel in North America, are all religious institutions. As the first two are not limited to students of any particular locality, they are certainly not local in their nature and the board of missions is clearly of a general purpose also. Therefore, all three of these institutions are exempt from payment of the collateral inheritance tax. *In re Jones*, (N. J. 1907,) 67 A. 1035, affirmed 70 A. 1101.

<sup>4</sup>*Carter v. Eaton*, 75 N. H. 560, 78 Atl. 643.

### Sec. 261. Special Exemptions.

Special exemptions of individual bequests from inheritance taxation have been sometimes passed in this country,<sup>1</sup> and upheld where uniformity of taxation is not required.<sup>2</sup> A general inheritance tax exemption may supersede special exemptions.<sup>3</sup>

<sup>1</sup>Mass. St. 1908, p. 840. Pa. St. 1855, c. 47, specially exempts a certain legacy to an orphan asylum from the payment of the inheritance tax. Pa. St. 1873, c. 290. Va. St. 1897-98, c. 562.

<sup>2</sup>*Commonwealth v. Henderson*, 172 Pa. St. 135.

<sup>3</sup>*In re Huntington*, 168 N. Y. 399, 408, 61 N. E. 643, affirming 62 N. Y. App. Div. 96.

## CHAPTER XXXIII.

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### EXEMPTIONS FOR GOVERNMENTAL PURPOSES.

- § 262. Federal Taxation of Bequest to State or Municipality.
- § 263. State Taxation of Bequest to United States.
- § 264. Government Bonds.
- § 265. Municipal Corporations or Public Institutions.
- § 266. To Town in another State.
- § 267. Funds in Hands of Court in Trust.

#### Sec. 262. Federal Taxation of Bequest to State or Municipality.

The federal congress has the power to impose a succession tax upon a bequest to a municipal corporation of a state for a corporate and public purpose, and U. S. Stat. June 13, 1898, as amended March 2, 1901, exercises this authority.<sup>1</sup>

As congress has the power to tax successions and the states have the same power, and such power of the states extends to bequests to the United States, it follows that congress has the same power to tax the transmission of property by legacy to states or their municipalities and that the exercise of that power in neither case conflicts with the proposition that neither the federal nor the state government can tax the property or agencies of the other, since the taxes imposed are not upon the property but upon the right to succeed to property.<sup>2</sup>

<sup>1</sup>*Snyder v. Bettman*, 190 U. S. 249, 23 S. Ct. 803, 47 L. Ed. 1035, Fuller, White and Peckham, JJ., dissenting.

<sup>2</sup>*Snyder v. Bettman*, 190 U. S. 249, 23 S. Ct. 803, 47 L. Ed. 1035.

#### Sec. 263. State Taxation of Bequest to United States.

The state can tax a bequest or devise to the United States.

*In re* Murphy, 4 Misc. Rep. 230, 25 N. Y. Suppl. 107. *In re* Cullum, 5 Misc. Rep. 173, 25 N. Y. Suppl. 699.

A legacy to the United States is subject to the inheritance tax. "This tax, in effect, limits the power of testamentary disposition, and legatees and devisees take their bequests and devises subject to this tax imposed upon the succession of property. This view eliminates from the case the point urged by the appellant that to collect this tax would be in violation of the well-established rule that

the state cannot tax the property of the United States. Assuming this legacy vested in the United States at the moment of testator's death, yet in contemplation of law the tax was fixed on the succession at the same instant of time. This is not a tax imposed by the state on the property of the United States. The property that vests in the United States under this will is the net amount of its legacy after the succession tax is paid." *Per* Bartlett, J., in *In re Merriam*, 141 N. Y. 479, 484, 36 N. E. 505.

N. Y. St. 1885, c. 483, as amended by St. 1891, c. 215, exempted from the inheritance tax societies, corporations and institutions now exempted by law from taxation, and the court holds that the United States is not a corporation exempt by law from taxation. It is a settled doctrine of New York that exemption from taxation is granted only to domestic corporations and this doctrine is applied to their inheritance tax law in the *Matter of Prime*, 136 N. Y. 347. The legislature intended to allow an exemption only in favor of such corporations as it had itself created and which might reasonably be supposed to be the special objects of its solicitude and bounty. We think it was not intended to apply the exemption to a purely political or governmental corporation like the United States. *United States v. Perkins*, 163 U. S. 625, 16 Sup. Ct. 1073, 41 L. Ed. 287, affirming *In re Merriam*, 141 N. Y. 479, 36 N. E. 505.

## Sec. 264. Government Bonds.

Under the prevailing theory that the inheritance tax is a burden on the succession and not on the property the tax may be levied, although the funds of the estate may be invested in government bonds of various kinds. Thus United States bonds may be taxable under a state tax,<sup>1</sup> or under the federal tax.<sup>2</sup> State and municipal bonds are also taxable under state law.<sup>3</sup> Such taxation does not constitute a breach of the obligation of the contract of exemption in the bonds under the federal constitution.<sup>4</sup>

<sup>1</sup> *In re Howard*, 5 Dem. Surr. (N. Y.) 483. *In re Carver*, 4 Misc. Rep. 592, 25 N. Y. Suppl. 991. *In re Sherman*, 153 N. Y. 1, 4, 46 N. E. 1032, affirming 15 N. Y. App. Div. 628. *Strode v. Commonwealth*, 52 Pa. St. 181. *Clymer v. Commonwealth*, 52 Pa. St. 181, 186. *Plummer v. Coler*, 178 U. S. 115. *Succession of Levy*, 115 La. 378, 39 S. 37, affirmed *Cohen v. Brewster*, 203 U. S. 552, 27 S. Ct. 174, 51 L. Ed. 310, following the case of *Plummer v. Coler*, 178 U. S. 115, 20 S. Ct. 829, 44 L. Ed. 998. *Wallace v. Myers*, 38 Fed. 184, 4 L. R. A. 171.

The court after an exhaustive review of the state and federal authorities concludes as follows: "We think the conclusion, fairly to be drawn from the state and federal cases, is, that the right to take property by will or descent is derived from and regulated by municipal law; that, in assessing a tax upon such right or privilege, the state may lawfully measure or fix the amount of the tax by referring to the value of the property passing; and that the incidental fact that such property is composed, in whole or in part, of federal securities, does not invalidate the tax or the law under which it is imposed." The court discusses the question of the evils resulting from a state tax on the transfer of United States securities and finds that those evils are insignificant. The court

finds that the tax is not upon the United States but upon the right to transmit the securities, and should be paid, as the charges of administration are paid out of the securities. *Plummer v. Coler*, 178 U. S. 115, 138.

"The mistake of the learned counsel for the plaintiff in error consists, we conceive, in treating this as a tax of the government bonds, when it is really a tax upon a decedent's estate, dying without lineal heirs. And it does not help the argument, that the bulk of the estate is made up of these bonds; for that estate passed into the hands of the executor for administration, and is taxed in his hands as an estate. The law takes every decedent's estate into custody, and administers it for the benefit of creditors, legatees, devisees and heirs, and delivers the residue that remains, after discharging all obligations, to the distributees entitled to receive it. One of the legal obligations to which every estate that is to go to collateral kindred is subject, is this five per cent duty to the commonwealth. And it is not until this work of administration is performed, that the right of succession attaches. The distributees may, indeed, consent to accept certain goods and chattels in specie without conversion, as is frequently done in settlement of estates; but such arrangement in no case affects the theory of the law, that the estate is first to be administered and then enjoyed. Now this five per cent tax is one of the conditions of administration, and to deny the right of the state to impose it, is to deny the right of the state to regulate the administration of decedents' goods. If an estate consist wholly of federal bonds and is indebted, conversion of them into money is necessary to pay the debts; and nobody would doubt that the sum that remained after payment of debts would be subject to a deduction of five per cent for the use of the state. But suppose the federal bonds be used to pay the only indebtedness that exists, and a residue of estate remains for distributees, is it not to pay the collateral inheritance tax? Clearly it must, though it may be less than the aggregate of the bonds. The act operates on the residue of the estate after paying debts and charges, and, theoretically, that residue is always a balance in money. The administration account always exhibits a balance in cash, not in specific goods, whether bonds or horses; and though an heir may take bonds or horses as cash, the account must show, and always does show, a cash balance. That is the fund taxed by this law, and not the bonds or other chattels which may have produced the fund. Therefore, neither the prohibitory clause of the Act of Congress of 1862, nor any of the principles of decision against state authority to tax that which federal authority has exempted from taxation, have any application here. The federal government has not prohibited the states from prescribing rules of inheritance and succession to estates of decedents, and it would be a grievous mistake of legislative and judicial authority to apply it with such effect." *Per Woodward, C. J.*, in *Strode v. Commonwealth*, 52 Pa. St. 181 (2 P. F. Smith).

The New York statute of 1892 did not include government bonds as its language confined it to property over which the state has jurisdiction for purposes of taxation. *In re Purdy*, 24 Misc. Rep. 301, 53 N. Y. Suppl. 735, 2 Gibbons 527. *In re Coogan*, 27 Misc. Rep. 563, 59 N. Y. Suppl. 111. *In re Sherman*, 153 N. Y. 1, 5, 46 N. E. 1032, affirming 15 N. Y. App. Div. 628.

<sup>1</sup>The exempting clauses in the statutes and on the face of the bonds do not mean that a state or the United States may not tax inheritances and legacies, regardless of the character of the property of which they are composed. "That some of the holders of United States bonds may have paid franchise taxes to the



states, and others may have paid state or federal inheritance and legacy taxes, has nothing to do with the contract between the United States and the bondholders. The United States will have complied with their contract when they pay to the original holders of their bonds, or to their assigns, the interest when due, in full, and the principal, when due, in full." *Per Shiras, J.*, in *Murdock v. Ward*, 178 U. S. 139, 148, 20 S. Ct. 775, 44 L. Ed. 1009.

<sup>2</sup>*Succession of Kohn*, 115 La. Ann. 71, 38 S. 898. *In re Dows*, 167 N. Y. 227, 60 N. E. 439, 52 L. R. A. 433, 88 Am. St. Rep. 508, affirming 60 N. Y. App. Div. 630 (affirmed *sub nomine*, *Orr v. Gilman*, 183 U. S. 278, 22 S. Ct. 213, 46 L. Ed. 196).

<sup>4</sup>*Orr v. Gilman*, 183 U. S. 278, 22 S. Ct. 213, 46 L. Ed. 196.

### Sec. 265. Municipal Corporations or Public Institutions.

The tax may be imposed on gifts for public purposes. The inheritance tax is not levied upon the fund but upon its transmission, and hence the argument that it is against the policy of the law to levy a tax upon a fund devised for a public school has no bearing upon the case at bar, for the reason that this fund does not become a fund devoted to the maintenance of a school until the law relative to its transmission has been complied with. The tax must be paid before the fund in question can become the property of the school or be devoted to educational purposes,<sup>1</sup> though an exemption may be implied to gifts to public institutions<sup>2</sup> or municipal corporations.<sup>3</sup>

<sup>1</sup>*Leavell v. Arnold*, 131 Ky. 426, 115 S. W. 232.

<sup>2</sup>*In re Harris*, 38 Ohio Wkly. L. Bul. 281 (Smithsonian Institute).

An implied exemption from taxation under Col. St. 1902, c. 3, should be allowed to state institutions, as laying a tax upon them would in the end produce no net revenue. And bequests to a state and county for a hospital and to the regent of the state university for an auditorium are not subject to the state inheritance tax. *In re Macky*, 46 Colo. 79, 102 P. 1075.

<sup>3</sup>Under N. Y. St. 1887, c. 713, s. 1, the exemption of "societies, corporations and institutions now exempted by law from taxation," was not intended to apply to bequests to municipal corporations. The property of municipal corporations are never included in the terms of any law providing for the imposition of a tax, not because it is exempt, but for the reason that in the nature of things it never was and never can be taxable, as this would be a tax by the government upon itself and utterly useless. Exemption implies that the person or corporation to which it applies is or would otherwise be taxable. To include public property which is not and in the nature of things cannot be taxable at all within the terms of an exemption act, would be to do a vain and useless thing which cannot be imputed to the legislature. There is no sound distinction between this case and that of a bequest to the United States in which we held that the gift was subject to the tax. *In re Hamilton*, 148 N. Y. 310, 314, 42 N. E. 717, affirming 90 Hun 608. See *In re Thrall*, 157 N. Y. 46, 51 N. E. 413, holding that as the

property of a municipal corporation was exempt a bequest to a municipal corporation for a public library is exempt.

**Sec. 266. To Town in another State.**

The testator made a bequest to a town in New Hampshire of the residue of her property as a perpetual fund in trust, the income to be expended in aid of the worthy poor of American parentage residents of the town. The testator died November 23, 1908, and the court holds that the Massachusetts statute of 1909, c. 527, section 1, providing that the exemption of gifts to charitable purposes shall be an exemption of gifts to "charities to be carried out within this commonwealth," and that the exemption of bequests to a "state or town for public purposes" shall be an exemption to "a city or town within this commonwealth for public purposes," is merely declaratory of previous statutes. The court notes that the charitable exemption has always been confined in Massachusetts to towns of Massachusetts and finds in the history of the statutes which it discusses no reason to think that this policy had ever been altered.

*Davis v. Stevens*, 208 Mass. 343, 94 N. E. 556.

**Sec. 267. Fund in Hands of Court in Trust.**

A bequest in trust for charitable purpose is not exempt simply because it is in the hands of the court.

The court reverses the order of the surrogate to the effect that where a devise in trust for the purpose of founding a home for the aged was made, the trust to last during two lives only, the fund after the end of the trust was in the hands of the supreme court and therefore exempt from taxation. The appellate division remarks that the fund is not a gift to the state and does not become the property of the state; that the omission of the testator to supply a trustee after the two lives is supplied by the legislative intervention, but that does not alter the character of the gift, nor give any control over it for any purpose beyond that outlined by the will. *Knight v. Stevens*, 72 N. Y. Suppl. 815, reversing *In re Graves*, 70 N. Y. Suppl. 727.

## CHAPTER XXXIV.

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### EXEMPTIONS FOR RELIGIOUS OR CHARITABLE PURPOSES.

- § 268. Almshouse.
- § 269. Art Museum.
- § 270. Bishop.
- § 271. Charities.
- § 272. To County for Charitable Purposes.
- § 273. Churches and Dependent Societies.
- § 274. Prevention of Cruelty.
- § 275. Drinking Fountain and Monument to Horse.
- § 276. Educational. — University.
- § 277. Historical and Antiquarian Society.
- § 278. Homes.
- § 279. Hospital.
- § 280. "Institutions."
- § 281. Libraries.
- § 282. Masons.
- § 283. Missionary Societies.
- § 284. Temperance Societies.
- § 285. Women's Relief Corps.
- § 286. Young Men's Christian Association.
- § 287. Trust for Charity.

#### Sec. 268. Almshouse.

An almshouse may be any home which is absolutely free.

Institutions to be exempt as an almshouse must be absolutely free and all benefits must be given gratuitously. *In re Vanderbilt*, 10 N. Y. Suppl. 239, 2 Con. Surr. 319.

An institution for the blind which does not receive pay from patients under any circumstances is exempt as an almshouse. *In re Underhill*, 20 N. Y. Suppl. 134, 2 Con. Surr. 262.

#### Sec. 269. Art Museum.

An art museum may be subject to tax,<sup>1</sup> or may be exempt as an educational institution.<sup>2</sup>

<sup>1</sup>*In re Vanderbilt*, 10 N. Y. Suppl. 239, 2 Con. Surr. 319. *In re Wolfe*, 15 N. Y. Suppl. 539, 2 Con. Surr. 600, reversed, 137 N. Y. 205.

<sup>2</sup>*In re Mergentime*, 195 N. Y. 572, 88 N. E. 1125, affirming 129 N. Y. App. Div. 367, 113 N. Y. Suppl. 948.

### Sec. 270. Bishop.

A New York exemption of property devised to a bishop covers a bequest to an archbishop or cardinal archbishop in his official capacity,<sup>1</sup> or to a bishop who is at the death of the testator a non-resident.<sup>2</sup>

<sup>1</sup>The clear intent and object of the law was to exempt the property held by religious corporations whether held in the name of the corporation itself or in the name of one of the religious heads of the church or denomination. *In re Kelly*, 29 Misc. Rep. 169, 60 N. Y. Suppl. 1005.

<sup>2</sup>The testator died in 1896 leaving a legacy "to Bishop William Taylor, or his living successor, to be used in his African mission work." Bishop Taylor died before the testator and his living successor was a resident of New Jersey. It was argued that the bishop took this in his official capacity and that it was therefore subject to taxation as a charitable gift to a non-resident. But the court holds that the office of bishop is not a state office and that the bishop is not a corporation sole. The state does not recognize the existence of any ecclesiastical office the result of which is to give to the holders of it the right of perpetual succession, or any other rights similar to those which are enjoyed by corporations. The designation of a person as a bishop is a mere *descriptio personae*. Therefore this legacy is exempt from taxation under the statute of 1892 exempting from the tax legacies to "any person who is a bishop, or to any religious corporation." *In re Palmer*, 158 N. Y. 669, 52 N. E. 1125, affirming 33 N. Y. App. Div. 307.

### Sec. 271. Charities.

Charitable organizations are not exempt from the inheritance tax unless specifically so designated,<sup>1</sup> but have been usually specially named as exempt.<sup>2</sup> The courts in determining whether or not a gift is charitable will not look to the motives of the donor but rather to the nature of the gift and the object which will be attained by it.<sup>3</sup>

<sup>1</sup>*Leavell v. Arnold*, 131 Ky. 426, 115 S. W. 232. *In re Jones*, 50 Hun 603, 2 N. Y. Suppl. 671, 22 Abb. N. Cas. 50, 1 Con. Surr. 125. See *In re Bates*, 7 Ohio N. P. 625, 5 Ohio S. & C. P. Dec. 547. *In re Simon*, 7 Ohio N. P. 667, 39 Wkly. L. Bul. 369. A special exemption of the property of Cooper Union is not sufficient to save it from taxation, *In re Kucielski*, 128 N. Y. Suppl. 768.

<sup>2</sup>*Succession of Levy*, 115 La. 378, 39 S. 37, affirmed *Cohen v. Brewster*, 203 U. S. 552, 27 S. Ct. 174, 51 L. Ed. 310.

The Craig Colony for Epileptics organized to treat a class of unfortunates is charitable and therefore exempt from taxation, though its patients work on its lands to grow food or to produce things sold by the state to purchase necessities. *In re Moore*, 66 Misc. 116, 122 N. Y. Suppl. 828, affirmed 128 N. Y. Suppl. 1135.

The New York Association for Improving the Condition of the Poor, which is a pure charity making no charge whatever, is exempt from taxation. *In re Lenox*, 9 N. Y. Suppl. 895.

The Church Charity Foundation on Long Island, all of whose property is used for the maintenance of aged and indigent persons and orphans and other children, is exempt from taxation in its personal property under the statute of 1895. *In re Hunter*, 11 N. Y. St. Rep. 704.

The Children's Aid Society is exempt. *In re Huntington*, 70 N. Y. Suppl. 853, modifying 70 N. Y. Suppl. 429.

<sup>2</sup> *In re Graves*, 242 Ill. 23, 89 N. E. 672, 134 Am. St. R. 302.

### **Sec. 272. To County for Charitable Purposes.**

A gift to public officers as trustees to carry out a charitable purpose may be exempt as a charitable gift.

*In re Spangler*, 148 Iowa 333, 127 N. W. 625.

### **Sec. 273. Churches and Dependent Societies.**

Churches,<sup>1</sup> or bequests for the benefit of churches,<sup>2</sup> or societies connected with churches,<sup>3</sup> are commonly exempt from taxation, as are generally bequests for religious uses.<sup>4</sup>

<sup>1</sup> Congregational and Baptist churches are religious societies and public charitable associations or societies within the meaning of the New Hampshire law. *Carter v. Eaton*, 75 N. H. 560, 78 Atl. 643.

Grace Church is not exempt from taxation, as its benefits and privileges are not free to all. *In re Wolfe*, 15 N. Y. Suppl. 539, 2 Con. Surr. 600, reversed 137, 205.

<sup>2</sup> Where a legacy was made to a church of three thousand dollars, the income of which was to be used for the benefit of the church, as the church holds the principal fund as trustee and can only use the income, and since the income can only be used for church purposes, it follows that the legacy is not subject to the inheritance tax. *Carter v. Story*, (N. H. 1911,) 78 A. 1072, citing *Carter v. Eaton*, 75 N. H. 560, 78 A. 643.

<sup>3</sup> *In re Lyon*, 128 N. Y. Suppl. 1004. The Church Foundation is exempt under the statute of 1885. *Church Charity Foundation v. People*, 6 Dem. Surr. (N. Y.) 154.

A gift to the American Bible Society is subject to the inheritance tax in force in 1890. *In re Lenox*, 9 N. Y. Suppl. 895.

The American Baptist Publication Society, organized for the purpose of promoting evangelical religion by means of the Bible, printing press, colportage, Sunday schools and other appropriate ways, is not a "charitable" corporation, as a person or corporation seeking to advance the cause of religion only cannot be said to be engaged in a charitable work in the ordinary sense in which that term is used. *In re McCormick*, 127 N. Y. Suppl. 493.

Societies connected with the Methodist church for religious, educational and philanthropic purposes are charitable, and the fact that they may more directly

benefit their members than those who are not members does not deprive them of their public character. They are therefore exempt from taxation. *Carter v. Whitcomb*, 74 N. H. 482, 69 A. 779.

<sup>4</sup>The Young Men's Christian Association is not a religious corporation. *In re Fay*, 37 Misc. 532, 76 N. Y. Suppl. 62. *Young Men's Christian Association v. New York*, 113 N. Y. 187, 21 N. E. 86. See, however, *Little v. Newburyport*, 210 Mass. 414, 96 N. E. 1032.

## Sec. 274. Prevention of Cruelty.

A society for the prevention of cruelty to children may be included in societies organized for the enforcement of laws relating to children,<sup>1</sup> while a society for the prevention of cruelty to animals is not a charitable corporation, as its work is confined to animals and not to human beings.<sup>2</sup>

<sup>1</sup>*In re Moses*, 123 N. Y. Suppl. 443, modifying and affirming 60 Misc. 637, 113 N. Y. Suppl. 930.

<sup>2</sup>*In re Keith*, 5 N. Y. Suppl. 201, 1 Con. Surr. 370.

## Sec. 275. Drinking Fountain and Monument to Horse.

The court holds that a certain gift to the public authorities for the erection of a drinking fountain or drinking basin for horses, and in connection therewith a bronze statue of a certain horse together with a record of his performances, is exempt from the inheritance tax as a charitable gift.

*In re Graves*, 242 Ill. 23, 89 N. E. 672, 134 Am. St. R. 302 (as the court looks to the nature of the gift and the object to be accomplished rather than the motives of the donor).

## Sec. 276. Educational. — University.

Gifts for educational purposes are commonly exempt.<sup>1</sup> A library may be properly classed as an educational institution.<sup>2</sup> A university may be found a charitable institution,<sup>3</sup> but not a religious institution, even though it has a theological department as an adjunct of its principal departments, which are purely secular.<sup>4</sup>

<sup>1</sup>*In re Arnot*, 130 N. Y. Suppl. 197, devise to corporation to be formed for art class and reference library for public is exempt as "educational." The statute of 1900, chapter 382, made a change in the law and under it a corporation organized exclusively for educational purposes is no longer exempt from the inheritance tax. *In re Crouse*, 34 Misc. 670, 70 N. Y. Suppl. 731.

The Young Men's Christian Association was treated as "educational" in *In re Moses*, 123 N. Y. Suppl. 443, 60 Misc. 637, 113 N. Y. Suppl. 930.

<sup>2</sup>*Essex v. Brooks*, 164 Mass. 79, 83, 41 N. E. 119. *In re Francis*, 189 N. Y. 554, 82 N. E. 1126, affirming 121 N. Y. App. Div. 129, 105 N. Y. Suppl. 643.

<sup>3</sup>Alfred University is a school of learning, having an academic, collegiate and a theological department, which is a corporation and has no capital stock and pays no dividends and is primarily supported by funds derived from public and private charity together with tuition fees. Whatever is received is devoted to the object of sustaining the institution and increasing its benefits to the public by extending and improving its accommodations and diminishing its expenses. A gift to such an institution is a bequest to a charitable institution, and all gifts for the promotion of education are charitable in a legal sense where the elements of private gain are wanting and where the scheme is in part supported by public or private contributions. *Alfred University v. Hancock*, 69 N. J. Eq. 470, 46 A. 178.

<sup>4</sup>If the theological department is to be regarded as religious, the two others are purely secular. An institution of such blended secular and religious qualities can in no sense be classed as a religious institution. *Alfred University v. Hancock*, 69 N. J. Eq. 470, 46 A. 178.

### Sec. 277. Historical and Antiquarian Society.

The Vineland Historical and Antiquarian Society is not a charitable institution within the meaning of the language used in section 1 of the New Jersey act of 1894. This society was organized under the statute of 1875 to incorporate societies "for the promotion of learning." Gifts for educational purposes are gifts to valid charitable uses in New Jersey. But it is not enough to say that the institution was incorporated under the act for the promotion of learning or avows itself to be organized for the purpose of promoting learning. An institution claiming exemption on the ground of its educational character must disclose the objects to which it is bound to devote its property. It must appear that the objects disclosed have some educational value and that the benefits and advantages of the institution in respect to such objects are open to the general public, or at least to such persons as may seek them. The society in question, however, has for its object to collect and preserve historical and current accounts of events and other matters connected with the interests of Vineland; and the court finds that the society has failed to show that such a collection is of educational value. "Such a collection would not resemble a library, but rather a museum." It also appeared that the legacy given to the society was given without any limitation or condition and therefore imposed no duty on the society except that which may be inferred from the terms contained in the organization of the society as a corporation. The mere fact, therefore, that the society now opens its collection to the public would not bind the society to continue to do so.

*In re Vineland Historical and Antiquarian Society*, 66 N. J. Eq. 291, 56 A. 1039.

### Sec. 278. Homes.

Homes<sup>1</sup> for children,<sup>2</sup> or for the aged, may be free of taxation<sup>3</sup> although an entrance fee is charged,<sup>4</sup> and inmates are required to turn over all their property to the home on admission,<sup>5</sup> but not if they charge board.<sup>6</sup>

<sup>1</sup>Under the statute of 1900, chapter 382, the property of the American Female Guardian Society and the Home for the Friendless, and the New York Society for the Relief of the Ruptured and Crippled, is not exempt from the transfer tax. *In re Huntington*, 70 N. Y. Suppl. 853, modifying 70 N. Y. Suppl. 429.

<sup>2</sup>*In re Higgins*, 55 Misc. 175, 106 N. Y. Suppl. 465.

The Wartburg Orphan Farm School is exempt from taxation under general law in New York as a "house of industry" and is therefore exempt from the collateral inheritance tax of 1887. *In re Herr*, 57 Hun 591, 10 N. Y. Suppl. 680, affirming 55 Hun 167, 7 N. Y. Suppl. 852.

<sup>3</sup>*In re Graves*, 171 N. Y. 40, 63 N. E. 787, reversing 66 N. Y. App. Div. 267, 34 Misc. 677, 70 N. Y. Suppl. 727 (corporation to be organized).

<sup>4</sup>*In re Vassar*, 127 N. Y. 1, 14, 27 N. E. 394, reversing 58 Hun 378, 12 N. Y. Suppl. 203.

<sup>5</sup>*Carter v. Whitcomb*, 74 N. H. 482, 69 A. 779.

The Baptist Home Society of New York requires a payment of an admission fee of a thousand dollars and that all those who enter shall make a will in its favor; and it is therefore not an almshouse and so is not exempt under the New York statute. *In re Keech*, 57 Hun 588, 11 N. Y. Suppl. 265.

<sup>6</sup>*In re Lenox*, 9 N. Y. Suppl. 895.

### Sec. 279. Hospitals.

Hospitals are commonly exempt.

*In re Huntington*, 70 N. Y. Suppl. 853, modifying 70 N. Y. Suppl. 429.

Under the statute of 1905, chapter 368, section 221, a bequest to a corporation organized to carry on a general city hospital is exempt from taxation. *In re Higgins*, 55 Misc. 175, 106 N. Y. Suppl. 465.

The St. John's Riverside Hospital is a charitable institution whose object is the maintenance and support of a hospital for indigent patients and as such is an almshouse and so exempt under New York law from the inheritance tax. *In re Curtis*, 25 N. Y. St. 1028, 7 N. Y. Suppl. 207, 1 Con. Surr. 471.

*Contra*, *In re Howell*, 34 Misc. Rep. 40, 69 N. Y. Suppl. 505, under St. 1900, c. 382.

### Sec. 280. "Institution."

A gift to a trust company in trust for "needy aged men and women" is not exempt, as such a trust cannot by the broadest latitude be called an "institution." Very likely the "institution"



need not be incorporated, but it is contemplated as an owner of property, not as property.

*Hooper v. Shaw*, 176 Mass. 190, 57 N. E. 361.

### Sec. 281. Libraries.

Public libraries may be exempt.

*Essex v. Brooks*, 164 Mass. 79, 83, 41 N. E. 119, as an educational or charitable corporation. *In re Higgins*, 55 Misc. 175, 106 N. Y. Suppl. 465. See *In re Francis*, 189 N. Y. 554, 82 N. E. 1126, affirming 121 N. Y. App. Div. 129, 105 N. Y. Suppl. 643, holding a library association to be educational.

The **Young Men's Christian Association** was treated under its charter as a public library in *In re Howell*, 34 Misc. 40, 69 N. Y. Suppl. 505.

Under the New York statute of 1896 there was a material change in the exemption law as to the property of public corporations. The statute renders all property in the state taxable unless exempt from taxation by law, and in the next section specifies property of a municipal corporation as exempt. Therefore a bequest to a municipal corporation for a public library is exempt from the transfer tax under the New York statute of 1896. *In re Thrall*, 157 N. Y. 46, 51 N. E. 411.

### Sec. 282. Masons.

A masonic lodge, a part of the activities of which is engaged in helping the families of members who become in want, is exempt as a charitable institution.

*Morrow v. Smith*, 145 Iowa 514, 124 N. W. 316.

### Sec. 283. Missionary Societies.

Both home<sup>1</sup> and foreign<sup>2</sup> missionary societies have been denied exemption where they expended their funds largely outside the state, but have been exempt where their funds are expended in the state.<sup>3</sup>

<sup>1</sup>*Carter v. Whitcomb*, 74 N. H. 482, 491, 69 A. 779. *In re Board of Home Missions*, 11 N. Y. Suppl. 311. *In re White*, 118 N. Y. App. Div. 809, 103 N. Y. Suppl. 688. *In re Kavanagh*, 6 N. Y. Suppl. 669.

<sup>2</sup>*Carter v. Whitcomb*, 74 N. H. 482, 489, 69 A. 779. *In re Board of Foreign Missions*, 58 Hun 116, 33 N. Y. St. 789, 11 N. Y. Suppl. 310.

<sup>3</sup>*In re Prall*, 78 N. Y. App. Div. 301, 79 N. Y. Suppl. 971.

### Sec. 284. Temperance Societies.

The Woman's Christian Temperance Union falls within the class of benevolent educational charitable corporations intended to be exempt.

*In re Moore*, 66 Misc. 116, 122 N. Y. Suppl. 828. *In re Field*, 71 Misc. 396, 130 N. Y. Suppl. 195.

### Sec. 285. Woman's Relief Corps.

The Woman's Relief Corps is a public charity exempt from the inheritance tax in New Hampshire although its benefits are bestowed only upon those who have been soldiers, or upon their families, to the exclusion of all others.

*Carter v. Whitcomb*, 74 N. H. 482, 489, 69 A. 779.

### Sec. 286. Young Men's Christian Association.

The Young Men's Christian Association may be exempt as a charitable or religious corporation,<sup>1</sup> although it receives compensation from those able to pay,<sup>2</sup> or may be treated as educational,<sup>3</sup> or as a public library.<sup>4</sup>

<sup>1</sup> *Little v. Newburyport*, 210 Mass. 414, 96 N. E. 1032.

**Not Religious.** The Brooklyn Young Men's Christian Association is not a religious corporation, as it is not formed primarily for religious purposes and has no distinct form of worship or method of discipline, and the mere fact it has been formed for a good and worthy object in which incidentally there will be some religious exercises involved, does not make it a religious corporation. *In re Fay*, 37 Misc. Rep. 532, 76 N. Y. Suppl. 62. *Young Men's Christian Association v. New York*, 113 N. Y. 187, 21 N. E. 86. *In re Vanderbilt*, 10 N. Y. Suppl. 239, 2 Con. Surr. 319.

<sup>2</sup> *Carter v. Whitcomb*, 74 N. H. 482, 488, 69 A. 779 (also the woman's auxiliary).

<sup>3</sup> *In re Moses*, 123 N. Y. Suppl. 443, modifying and affirming 60 Misc. 637, 113 N. Y. Suppl. 930.

<sup>4</sup> *In re Howell*, 34 Misc. Rep. 40, 69 N. Y. Suppl. 505.

### Sec. 287. Trust for Charity.

Where the testator makes a direct bequest in absolute form and where it appears that a valid parole trust was created enforceable in equity in favor of certain religious corporations which were of a class exempt under the statute, the bequest itself is exempt from taxation.<sup>1</sup> However, a bequest to trustees for the purpose of founding a "Home for the Aged" is not exempt from taxation, as the exemptions in the statutes are confined to corporations or institutions having a definite organization.<sup>2</sup>

<sup>1</sup> *In re Murphy*, 4 Misc. Rep. 230, 25 N. Y. Suppl. 107.

<sup>2</sup> *Knight v. Stevens*, 66 N. Y. App. Div. 267, 72 N. Y. Suppl. 815, reversing *In re Graves*, 70 N. Y. Suppl. 727.

## CHAPTER XXXV.

### RATES.

§ 288. What Law Governs.

§ 289. Reckoned by Beneficial Interests rather than by Estate.

§ 290. Remainder or Contingent Interests.

§ 291. Computation of Progressive Rates.

§ 292. Primary and Secondary Rates as Applied to Income.

#### Sec. 288. What Law Governs.

The rate is fixed by the law in force at the death of the testator<sup>1</sup> and may remain in force under general law notwithstanding the failure of the legislature to fix the rate in its annual tax law.<sup>2</sup>

<sup>1</sup> *In re Stanford's Estate*, 126 Cal. 112, 58 P. 462, 45 L. R. A. 788. *Trippet v. State*, 149 Cal. 526, 86 P. 1084, 8 L. R. A. (N. S.) 1210. *In re Woodard's Estate*, 153 Cal. 39, 94 P. 242. See further, *ante*, s. 19.

<sup>2</sup> *Eyre v. Jacob*, 14 Gratt. (Va.) 422, 439, 73 Am. Dec. 367.

#### Sec. 289. Reckoned by Beneficial Interests rather than by Estate.

The rate of tax is usually determined by the size of the beneficial interest rather than of the estate.

*In re Vanderbilt*, 172 N. Y. 69, 73, 64 N. E. 782, modifying 68 N. Y. App. Div. 27, 74 N. Y. Suppl. 450, under St. 1899, c. 76. *Knowlton v. Moore*, 178 U. S. 41, 71, 20 S. Ct. 747, 44 L. Ed. 969. *Cf.* also, s. 68.

The court points out the gross inequalities which would result from a construction of the United States statute of 1898 that the rate of tax is determined by the size of the estate rather than the size of the legacy. The result would be that two persons receiving the same legacy from estates of different sizes would pay a different tax, and the court is bound to avoid a construction which would occasion great inequality and injustice if possible. *Knowlton v. Moore*, 178 U. S. 41, 76, 20 S. Ct. 747, 44 L. Ed. 969.

#### Sec. 290. Remainder or Contingent Interests.

The tax upon the life estate added to the estate in remainder need not necessarily equal exactly the tax on the principal.<sup>1</sup> The rate in case of a contingent uncertain interest should be the lowest possible.<sup>2</sup>

<sup>1</sup> *In re Christian*, 2 Pa. Co. Ct. 91, 18 Wkly. Notes Cas. 88.

<sup>2</sup> *State v. Pabst*, 139 Wis. 561, 589, 121 N. W. 351.

The court suggests to the legislature that N. Y. St. 1899, c. 76, providing for the present appraisal and taxation of remainders at the highest possible rate causes an inequality which is an injustice on life estates. The tax on the remainders being paid out of the *corpus* of the estate diminishes the income of the life tenant by the interest on the amount of the tax; and if it is desired to make taxes on remainders payable immediately it would be fairer to the life tenant to have the tax assessed at the lowest rate on any succession provided for by the will. In case the remainder eventually vesting should prove taxable at a higher rate then such increased tax should be payable at the time of its enjoyment. The court remarks that its experience is that in the majority of cases the lowest rate of tax usually proves the final rate, and where the state imposes in the first instance a higher rate of tax it becomes obligated to repay the excess after a lifetime at six per cent interest, while it could borrow money at half that rate. *In re Brez*, 172 N. Y. 609, 611, 64 N. E. 958, reversing 69 N. Y. App. Div. 619.

### Sec. 291. Computation of Progressive Rates.

In the case of a progressive tax primary rates may be levied on the lowest sum named and the secondary rates on the excess only<sup>1</sup> above the exemption.<sup>2</sup>

<sup>1</sup>The court holds that if the estate is over \$25,000 the statute does not mean that the first \$25,000 is exempt but that the "primary rates" were to be computed in all cases and that the tax is not merely upon the excess over \$25,000. *In re Bull's Estate*, 153 Cal. 715, 96 P. 366.

N. Y. St. 1896, s. 221, as amended by the statute of 1900, c. 706, provides for a graduated tax, and it was claimed that the secondary rates are to be calculated upon so much of the transfer as exceed the amounts taxable at a lower rate. The court considers that the words "property" and "interest" are by their context confined to the interest which passed to the individuals. On a grammatical construction of the statute in consideration of its language the court holds that the words "Up to and including the sum of" relate to the excess over the amount subject to the previous rate of taxation, and should be read as if the words in question were "upon all amounts of legacy which shall be in excess of said \$25,000." The amounts of each class are reckoned beginning with the amount of the next lower class and not by considering the amount of the whole estate in question. *In re Jourdan*, 70 Misc. 159, 128 N. Y. Suppl. 728. See further, *ante*, s. 66.

<sup>2</sup>The tax must be computed in all cases upon the true value of the inheritance above an exemption of ten thousand dollars; but when such valuation is less than fifty thousand dollars the tax rate is one and one-half per cent thereof; but when such valuation is fifty thousand dollars or over and less than one hundred thousand dollars the rate is three per cent; when such valuation is one hundred thousand dollars or over the rate is five per cent; and a tax on a legacy of the total value of fifty-eight thousand dollars should be at the rate of one and one-half per cent. It is clear from *State v. Basille*, 97 Minn. 11, 106 N. W. 93, 6 L. R. A. N. S. 732, that it was the intention to hold in that case that a tax was laid upon all inheritances less than fifty thousand dollars in value above the exemption at the rate of only one and one-half per cent. *State v. Probate Court*, 111 Minn. 297, 126 N. W. 1070.

[Validity of progressive rates, see *ante*, c. XIV.]

**Sec. 292. Primary and Secondary Rates as Applied to Income.**

Where payments of income are provided for by will the rate of taxation will not be increased from the primary to the secondary rate under the Minnesota act of 1905 until the value of the right acquired by the life tenant exceeds, exclusive of the statutory exemptions, fifty thousand dollars, and in like manner the rate cannot be increased to five per cent until such value exclusive of the exemption exceeds one hundred thousand dollars.

*State v. Probate Court*, 112 Minn. 279, 128 N. W. 18, 22.

## CHAPTER XXXVI.

### INTEREST AND PENALTIES.

- § 293. What Law Governs.
- § 294. In Absence of Express Provision. — Discount.
- § 295. From What Date Computed.
- § 296. Excuses for Delay.
- § 297. Pendency of Litigation.
- § 298. Liabilities of Executor or Administrator.

#### Sec. 293. What Law Governs.

Interest and penalties are governed by the law in force at the testator's death.<sup>1</sup> Penalties for failure to pay a general tax do not apply to the inheritance tax.<sup>2</sup>

<sup>1</sup> *In re Milne*, 76 Hun 328, 27 N. Y. Suppl. 727.

The decedent died in November, 1890, and contest arose over the probate of the will which was decided in March, 1891. The question arose whether interest on the amount of the tax due should be charged from the date of the death of the decedent or from a date eighteen months subsequent thereto. N. Y. St. 1892, c. 399, s. 4, does not apply to this case, as when the decedent died the law of 1887 applied, and under its provisions the executors would have a right to ask that the interest charged against them for delayed payment of the tax should be six per cent from the date of eighteen months after the death of the decedent. The repealing act of 1892 altered this provision but at the same time saved the right which in the meaning of the statute had either accrued or was accruing at the time of its passage. This provision of the fifth section of the act of 1887 may well be called a "right" within the meaning of the act of 1892. It was something which gave to the parties the absolute right to have the interest charged at a certain percentage and from a certain date, upon the fact appearing which the statute provided for; and the saving feature of the repealing act of the statute of 1892 applies to it. *In re Fayerweather*, 143 N. Y. 114, 38 N. E. 278.

<sup>2</sup> *Wright v. Blakeslee*, 101 U. S. 174, 178, 25 L. Ed. 1048, Fed. Cas. 18073, 13 Blat. 421, reversed.

#### Sec. 294. In Absence of Express Provision. — Discount.

Interest may not be chargeable unless expressly provided for.

*Succession of Kohn*, 115 La. Ann. 71, 38 S. 898.

**Discount.** The proviso of Col. St. 1902, c. 3, s. 23, that if the tax is paid within six months no interest shall be charged and that a discount of five per cent shall be allowed does not have the effect of rendering the interest charged a penalty but it is only the usual inducement held out to make those interested

in estates pay their taxes promptly and cannot be considered as fixing a time when the tax becomes delinquent, after which a penalty is imposed for non-payment. *People v. Rice*, 40 Colo. 508, 91 P. 33.

### Sec. 295. From What Date Computed.

Interest and penalties may run from the period provided by law for the settlement of the estate,<sup>1</sup> or from the death of the testator in case of a vested remainder,<sup>2</sup> but from the death of the life tenant in case of a contingent remainder.<sup>3</sup>

<sup>1</sup>*In re Banks*, 5 Pa. Co. Ct. 614.

**Effect of Delay.** Where the Massachusetts statute provides that the tax shall be payable at the expiration of two years after the date of giving bond with interest from that date, interest should be computed according to that rule, although a part of the estate was given in remainder or the dispositions of the will were modified by an agreement that was entered into. The whole estate was liable to the tax and there was nothing to affect the time when it was payable. *Bradford v. Storey*, 189 Mass. 104, 75 N. E. 256.

<sup>2</sup>Penn. St. 1850, P. L. 170, provided that taxes on remaindermen which were payable before the passage of the statute at the death of the decedent might be postponed until they come into actual possession, and relieved them from the penalty, but not from the interest. *Appeal of Commonwealth*, 127 Pa. St. 435, 438, 17 A. 1004. See also *Comm. v. Smith*, 20 Pa. St. (8 Harris) 100.

Where the testator died in 1835, leaving a life estate and a vested remainder, the remainder was then liable to a collateral inheritance tax upon its clear value, after deducting all previous estates. After the acts of 1850 and 1855 the tax could not be collected by the state until the actual enjoyment of the estate, but it continued a lien and should now be appraised at its value in 1835, first deducting the value of the life estate. Interest at the rate of six per cent is chargeable upon the appraised value from 1835 to the vesting of the estate in possession and must be paid by the persons now entitled to the estate. *Appeal of James*, 2 Del. Co. Rep. (Pa.) 164.

<sup>3</sup>Where a will left property to a life tenant and on her death to her children who might be living at the time of her death, it was not certain until that time whether the property would be subject to an inheritance or transfer tax, or whether the remainderman would ever be entitled to the possession of the property and thus become liable to be taxed. Until that time no tax accrued. Therefore interest at six per cent should be charged only from the death of the life tenant. *In re Davis*, 149 N. Y. 539, 548, 44 N. E. 185, affirming 91 Hun 53. See, however, under N. Y. St. 1899, c. 76, *ante*, s. 290.

### Sec. 296. Excuses for Delay.

The scarcity of funds to pay the tax,<sup>1</sup> or ignorance of the law, will not affect the running of interest,<sup>2</sup> although unavoidable delay<sup>3</sup> or uncertainty as to liability may prevent the imposition of interest or penalties.<sup>4</sup>

The court refused to enforce a penalty of eight per cent where no proceedings had been taken to enforce the tax on account of the general feeling that the law was unconstitutional. Under the inheritance law a penalty of eight per cent is collectible in case of non-payment within a year of the death of the testatrix; but the court refused to impose the penalty on the ground that it was unjust where there had been no effort made to enforce the law. As the direct inheritance tax was declared unconstitutional it was supposed that the collateral inheritance tax would meet the same fate. When the collateral inheritance tax was finally declared valid the court holds that the executors were not negligent in failing to pay the tax before the decision of the court, and that there was no basis for the imposition of a penalty.<sup>5</sup>

<sup>1</sup>Under Tenn. St. 1893, c. 174, s. 3, the tax bears interest from the date when it is payable, one year from the death of the decedent, notwithstanding the pendency of litigation, the scarcity of funds and other causes. *Shelton v. Campbell*, 109 Tenn. 690, 72 S. W. 112.

<sup>2</sup>*In re Platt*, 8 Misc. Rep. 144, 29 N. Y. Suppl. 396.

<sup>3</sup>"Unavoidable delay" may be a misnomer of the trustee named in the will which was not discovered for some time. *In re Banks*, 5 Pa. Co. Ct. 614.

**The burden of showing** that such unavoidable cause of delay in settling any estate exists is on the estate. *People v. Prout*, 53 Hun 541, 6 N. Y. Suppl. 457.

<sup>4</sup>Under Wisconsin statute the penalty of ten per cent should not be imposed for a three years' delay when it was uncertain during that time whether or not the transfer by a deed of gift was subject to taxation, as to the amount of stock included in it, and the value of the stock transferred. *State v. Pabst*, 139 Wis. 561, 595, 121 N. W. 351.

<sup>5</sup>*In re Bates*, 7 Ohio N. P. 625, 5 Ohio S. & C. P. Dec. 547.

## Sec. 297. Pendency of Litigation.

The pendency of litigation does not of itself postpone the beginning of the running of interest,<sup>1</sup> but may have this effect by statute<sup>2</sup> covering an "unavoidable cause of delay."<sup>3</sup>

<sup>1</sup>*People v. Rice*, 40 Colo. 508, 91 P. 33. *In re Stewart*, 131 N. Y. 274, 285, 30 N. E. 184, 14 L. R. A. 836, under the act of 1885.

Under the Pennsylvania statutes it was the duty of the executors to estimate the amount of personal estate involved in difficulties which could not be settled and pay the collateral inheritance tax on the balance. For failure to do so they are chargeable with interest at the rate of twelve per cent per annum from a year after the death of the testator. *Appeal of Commonwealth*, 34 Pa. St. (10 Casey) 204.

The fact that proceedings are pending to test the validity of the will cannot postpone the maturity of the tax when it appears that in either event, testacy



or intestacy, the tax will be payable at the same rate as in the present case, and interest is chargeable from one year after the testator's death. *Shelton v. Campbell*, 109 Tenn. 690, 72 S. W. 112.

<sup>2</sup>*In re Prout*, 22 N. Y. St. Rep. 334, 3 N. Y. Suppl. 834 (penalty and not interest). *In re Bolton*, 35 Misc. Rep. 688, 72 N. Y. Suppl. 430. *In re Miller*, 182 Pa. St. 157, 161, 37 A. 1000.

"Litigation" as set forth in the statute of 1887 as the cause of delaying the penalty for non-payment of the inheritance tax must be such that the amount of tax due cannot be definitely ascertained until its determination as between the estate and adverse parties. *In re Small*, 12 Pa. Co. Ct. 226.

**Where Legatees Died and no Representative was Appointed.** The legatee should be relieved from the payment of interest at ten per cent for the period covered by the contest of the wills of two heirs at law of the decedent, pending which contest the estates of these heirs had no legal representative, under N. Y. St. 1885, c. 483, s. 5. *In re Prout*, 3 N. Y. Suppl. 831.

<sup>3</sup>Litigation among distributees of an estate to determine their respective shares is "an unavoidable cause of delay at settling the estate." *In re Moore*, 90 Hun 162, 35 N. Y. Suppl. 782.

## Sec. 298. Liabilities of Executor or Administrator.

The executor is personally liable for excess interest after the time allowed by law to settle the estate.<sup>1</sup> The penalty should be charged to the administrator.<sup>2</sup>

<sup>1</sup>The court holds that the executor is not bound to pay the tax until the expiration of the year allowed him by law with which to settle the estate. He is entitled to know the amount payable for the payment of legacies after the debts are paid and to have a reasonable time thereafter before he pays the tax and the legacies. The court holds, therefore, that the executor should be allowed in his account for the principal of the tax he has paid together with interest collected thereon under the statute for one year; and that as he is bound to pay this tax on the legacies at the expiration of the year he cannot be allowed any interest he has paid thereon after that period. The executor is personally chargeable with the whole penalty and is not entitled to be allowed in the accounting for the excess interest or penalty. *Wyckoff v. O'Neil*, 72 N. J. Eq. 880, 67 A. 32.

The executor should not be charged with five per cent interest upon the amount of the transfer tax upon the estate upon the ground that he should have had the tax assessed and paid within six months after the death of the testator, where the testator died October 10, 1896, and probate was issued February 3, 1897, and the tax was assessed May 27, 1897. *In re Sudds*, 32 Misc. Rep. 182, 66 N. Y. Suppl. 231.

<sup>2</sup>*In re Palmer*, 2 Del. Co. Rep. (Pa.) 180.

## CHAPTER XXXVII.

### WHEN TAX ACCRUES.

- § 299. At Death of Testator.
- § 300. On Future Interests.
- § 301. Merger of Remainder.
- § 302. Interest in Estate of Another.

#### Sec. 299. At Death of Testator.

Inheritance taxes almost universally accrue at the death of the testator,<sup>1</sup> even in case of gifts *causa mortis*,<sup>2</sup> although the legacies are payable only after a statutory period for settling the estate,<sup>3</sup> which period may operate to postpone the payment of the inheritance tax.<sup>4</sup> Liability may, however, depend on demand for the tax.<sup>5</sup>

<sup>1</sup>*Estate of Sanford*, 126 Cal. 112, 58 P. 462, 45 L. R. A. 788. *In re Martin's Estate*, 153 Cal. 225, 94 P. 1053. *In re Bowen's Estate*, Cal. 1908, 94 P. 1055. *Ayers v. Chicago Tille & Trust Co.*, 187 Ill. 42, 58 N. E. 318. *In re Wells*, 142 Iowa 255, 120 N. W. 713. *Succession of Becker*, 118 La. Ann. 1056, 43 S. 701. *Appeal of Mellon*, 114 Pa. St. 564, 570, 8 A. 183. *In re Williamson*, 153 Pa. St. 508, 521, 26 A. 246, 32 Wkly. Notes Cas. 93. *In re Line*, 155 Pa. St. 378, 385, 26 A. 728, 32 Wkly. Notes Cas. 376.

**Reason for Rule.** "Man's dominion over his property ceases at his death, wherefore in all civilized countries the state provides how he may devolve it to others at his death and what shall become of it when he dies intestate. The right so given either to devolve or to succeed to property is subject to the power of the state to tax, and generally is taxed. To use a homely simile it may be likened to the taking of toll from the grist that is sent to the mill, and aside from considerations of convenience it is immaterial whether the whole toll be taken as soon as the grist is received or proportionately as the flour is delivered. But while the tax has been likened to the toll that is taken for the grinding of a grist, it must not be overlooked that it is the *right* to devolve or to succeed to property that is taxed, and that an additional exaction might be made as is done in some states for the service in passing the property, sometimes, as in England, called probate duties. So that the right of the state to and the liability of the successor for the tax generally arises upon the death of the owner of the property and is not dependent upon the right of succession ripening into possession or enjoyment, and the fact, if it be a fact, that the state may have, by measuring the amount of the tax by the value of the property succeeded to, made it impracticable or difficult to collect the tax until the right has ripened into possession, does not change the subject of the tax, but merely postpones its collection." *Per* Summers, J., in *Eury v. State*, 72 Ohio St. 448, 74 N. E. 650.

**Mere Postponement.** Where a title to a certain farm vested in the devisee and no estate for life or years intervened but he was to have the use of the farm for ten years and at the expiration of ten years to have the farm in fee, and where certain legacies with interest were to be paid to the legatees after the expiration of ten years, the time of the payment of the legacies only was postponed; and hence, neither the devise nor the bequests come within section 3 of the Pennsylvania statute of 1887, so as to postpone the payment of the collateral inheritance tax. *In re Dalrymple*, 215 Pa. St. 367, 373, 64 A. 554. See *State v. Probate Court*, 100 Minn. 192, 110 N. W. 865. *State v. Probate Court*, 101 Minn. 485, 112 N. W. 878.

The words "on his settlement" referring to payment of tax do not refer to a final settlement of the estate, but its settlement so far as the legatee or distributee is concerned, out of whose legacy or share the tax is to be retained, and the tax on each should be paid as soon as this legacy itself was paid. *Attorney General v. Allen*, 59 N. C. 144. The same construction was given to the federal act of 1898 in *Fidelity Trust Co. v. United States*, 45 Ct. Cl. 362.

<sup>2</sup> *In re Masury*, 159 N. Y. 532, 53 N. E. 1127, affirming 28 N. Y. App. Div. 580.

<sup>3</sup> *May v. Slack*, Fed. Cas. 9336.

<sup>4</sup> *Commonwealth v. Gaulbert*, 134 Ky. 157, 119 S. W. 779.

<sup>5</sup> *United States v. Pennsylvania Co.*, 27 Fed. 539 (under the federal act of 1866.)

## Sec. 300. On Future Interests.

Statutes usually postpone the tax on future interests until they come into possession, as in case of remainders,<sup>1</sup> or it may be left for the remaindermen to elect not to pay until they come into possession.<sup>2</sup> So the tax may be levied when the beneficiaries come into possession in case of contingent interests,<sup>3</sup> annuities,<sup>4</sup> or interests not immediately ascertainable.<sup>5</sup>

<sup>1</sup> *Ayers v. Chicago Title & Trust Co.*, 187 Ill. 42, 58 N. E. 318 (remainders to collaterals, strangers and the body politic). *Dow v. Abbott*, 197 Mass. 283, 288. *Appeal of James*, 2 Del. Co. Rep. (Pa.) 164 (by election of future beneficiaries under St. 1850, c. 170). *In re Wharton* (1881), 14 Phila. (Pa.) 279. *In re Von Storch*, 7 Pa. Dist. R. 204. *In re Budd*, 12 Pa. Co. Ct. 476 (provided security given under St. 1887). *Bailey v. Drane*, 96 Tenn. (12 Pickle) 16, 33 S. W. 573. *In re Cox*, 181 Pa. St. 369, 37 A. 517. *Hellman v. United States* (15 Blatch. 131), Fed. Cas. 6341, affirming Fed. Cas. 15, 343. *Clapp v. Mason*, 94 U. S. 589. *Vanderbilt v. Eidman*, 196 U. S. 480, 25 S. Ct. 331, 49 L. Ed. 563.

Sections 29 and 30 of United States statute of 1898 do not impose any tax upon a vested future interest before the period when possession or enjoyment had attached. The practice under the act of 1898 was to tax only beneficial interests where the right to possess or enjoy had accrued. It was thought that the amendment of March 2, 1901, 31 Stat. 946, changed this situation. The amendments which the tax officials decided made vested interests subject to taxation were that the tax or duty should be due and payable within one year after the death of the decedent, and that the executor, administrator or trustee should make the return of the estate in his control within thirty days after taking charge. The court holds, however, that these amendments did not justify

this construction that Congress intended to cause death duties to become due within one year as to legacies and distributive shares which were not capable of being immediately possessed or enjoyed, and were therefore not subject to taxation under the original act. *Vanderbilt v. Eidman*, 196 U. S. 480, 498, 25 S. Ct. 331, 49 L. Ed. 563.

Where the remaindermen do not or cannot (as where they are uncertain) make an election not to pay the tax until they come into actual enjoyment as provided by the statute, the tax must be paid at once. Furthermore, where there is no provision for the remainder going to collateral relatives, a stranger to the blood or to a corporation, there is no one to make an election and the tax on the remainder becomes due under the statute. *Ayers v. Chicago Title & Trust Co.*, 187 Ill. 42, 58 N. E. 318.

*In re Wallace*, 4 N. Y. Suppl. 465. *In re Westcott*, 11 Misc. Rep. 589, 33 N. Y. Suppl. 426, following *In re Hoffman*, 143 N. Y. 327, 38 N. E. 311. *In re Plum*, 37 Misc. Rep. 466, 75 N. Y. Suppl. 940. *In re Hooper*, 6 Low D. 560, 4 Ohio N. P. 186. *Bailey v. Drane*, 96 Tenn. (12 Pickle) 16, 33 S. W. 573.

The New York act of 1899 made future interests presently taxable. *In re Huber*, 86 N. Y. App. Div. 458, 83 N. Y. Suppl. 769, where property is left in trust on the death of the life tenant to a daughter for life and on her death to her issue. *Miller v. Tracy*, 93 N. Y. App. Div. 27, 86 N. Y. Suppl. 1024, considering the effect of the amendment of 1901. *In re Runcie*, 36 Misc. Rep. 607, 73 N. Y. Suppl. 1120, where the remaindermen are known.

The tax under the act of 1899 is not required to be paid by the conditional transferee, as it is to be paid out of the property transferred, so that whoever may ultimately take the property takes that which remains after the payment of the tax; it therefore contemplates defeasible transfers as well as absolute transfers. *In re Vanderbilt*, 172 N. Y. 69, 72, 64 N. E. 782, modifying 68 N. Y. App. Div. 27, 74 N. Y. Suppl. 450. *In re Brez*, 172 N. Y. 609, 64 N. E. 958, reversing 69 N. Y. App. Div. 619.

<sup>4</sup>*Disson v. McClain*, 147 Fed. 114, 77 C. C. A. 340, reversing 143 Fed. 191.

<sup>5</sup>*In re Millward*, 6 Misc. 425, 27 N. Y. Suppl. 286 (income of estate to widow for life but in case of remarriage then use of one-half only). *In re Simon*, 7 Ohio N. P. 667, 39 Wkly. L. Bul. 369 (remainders after life estate with power of using principal).

If the remaindermen are not ascertainable that is no reason why the tax should be collected from the life tenant who is exempt. The only effect of such condition would be that the tax would not be presently collectible at all, and the commonwealth would have to depend on its lien on the real estate, and its claim on the executors when they make distribution. *In re Cox*, 181 Pa. St. 369, 378, 37 A. 517.

Where a future estate depends on such possibilities as the marriage or having children of life tenants it is a mere possible interest which could not have a market value; and the courts in order to enforce immediate collection of the tax cannot change the tax from one on succession to one on property. No other course is left open in the practical administration of the statute than to postpone the assessing and collecting of tax upon such remote contingent interests as are incapable of valuation and as to which the rate and the exceptions cannot be determined. *Billings v. People*, 189 Ill. 472, 59 L. R. A. 807.

**Life Estate in Remainder.** Where a testator gives to his wife for life and on her death the life estate to G., the estate to G. comes within the statutory definition of a vested remainder, but it is very different from a case where the will gives a life estate to A. and the remainder to B. and his heirs. At the present time G. has no estate that she could sell to any one at any price and therefore the inheritance tax must be postponed until the death of the life tenant. *In re Westcott*, 11 Misc. Rep. 589, 33 N. Y. Suppl. 426.

### **Sec. 301. Merger of Remainder.**

Where the title to a succession has been accelerated by the extinction of prior interests by agreement of parties,<sup>1</sup> or by conveyance,<sup>2</sup> the tax is payable upon the whole.

<sup>1</sup> *Brune v. Smith*, Fed. Cas. 2053.

<sup>2</sup> Two remaindermen after a life interest to the wife of the testator conveyed their interests to the wife, but the court holds that a conveyance by these two parties does not withdraw the estate from the operation of the collateral inheritance tax law and defeat its collection. It was claimed that by the conveyance the estate of the wife became merged into a fee and that therefore there was nothing left for the remainders. The only question remaining is whether in view of the transfer made the period for the collection of the tax has been accelerated so as to make it collectible at once and if so from whom shall it be collected and upon what basis. The statute provides that the remainder is taxable only when it comes into possession and beneficial enjoyment. The court concludes that when the life tenant became the owner of the remainder interests in the property the two estates thereby merged into one and the remainder vested in possession to all intents and purposes and for all beneficial uses, and she might at once dispose of the whole estate in fee. She became thus entitled to the possession as fee simple owner of the estate and the beneficial use of it as a whole, and by virtue of these transactions a tax upon the remainder interest became at once payable and upon an assessment at its value at that time. The state as the effect of the transactions between the parties became at once entitled to an inheritance tax upon the full value of the remainder interest as fixed by the appraisement. *Harrison v. Johnston*, 109 Tenn. 245, 70 S. W. 414, 417.

### **Sec. 302. Interest in Estate of Another.**

The interest of the decedent in the estate of another is presently taxable although the net amount due thereunder is not yet fixed. The right of the decedent to the net amount was irrevocably fixed at his death, when he was in constructive possession of the property.

*In re Milliken*, 206 Pa. St. 149, 55 A. 853. See *In re Clinch*, 180 N. Y. 300 73 N. E. 35, affirming 99 N. Y. App. Div. 298, 90 N. Y. Suppl. 923, 44 Misc. 190 89 N. Y. Suppl. 802.

## CHAPTER XXXVIII.

### PERSONS LIABLE.

- § 303. Under Direction of Will, or of Court.
- § 304. Order of Probate Court as Protection.
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- § 317. Executors or Beneficiaries.
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- § 320. Mutually Acknowledged Relation of Parent.
- § 321. Bastards. — Effect of Legitimization.
- § 322. Loss of Tax Paid Unnecessarily Falls on Residue.

#### Sec. 303. Under Direction of Will, or of Court.

Whether inheritance taxes are a charge against the estate or are to be deducted from the several legacies is a question of the testator's intention, as expressed in his will.<sup>1</sup> The will may direct the executors to pay all legacies out of the estate,<sup>2</sup> but not unless clear reference to the inheritance tax is made,<sup>3</sup> and such direction cannot affect the tax on the residue by causing the tax on prior legacies to be deducted before its appraisal.<sup>4</sup> A testator may direct that the tax on a particular legacy shall be paid out of his estate; nevertheless, in reality the tax is still paid out of the legacy, the effect of the direction of the testator being merely to increase the legacy by the amount of the tax.<sup>5</sup> The provision in a will that the collateral inheritance tax shall be paid out of the residue but not out of the pecuniary legacies is not restricted to the legacies then given, but includes legacies given in a subsequent codicil.<sup>6</sup>

Where a decree of distribution orders a deduction only of "the amount of the inheritance tax as required by law," and does not fix the amount of such tax nor expressly adjudicate that any tax should be deducted but leaves the matter dependent upon whether or not the law requires any inheritance tax, the distributees are entitled to the entire residue of the estate under that decree where no inheritance tax could be collected.<sup>7</sup>

<sup>1</sup> *Kingsbury v. Bazeley*, 75 N. H. 13, 70 A. 916.

<sup>2</sup> **To Individuals.** Where the will directs the executors to pay taxes that may become due upon any legacies "given by this will to individuals" this language has no reference to legacies given to individuals in trust for establishing a charity. *Kingsbury v. Bazeley*, 75 N. H. 13, 70 A. 916.

**Money Includes Annuity.** Where the will provides that all bequests of "money" shall be paid without deduction for the inheritance tax, this included an annuity payable by a devisee out of the rents of the land. As the annuity is a bequest in money not subject to a deduction for the tax, the burden falls on the residuary estate, even though the bequest was payable out of rents coming from a particular source. *In re Lea*, 194 Pa. St. 524, 45 A. 337.

**Charge of Tax Subsequently Enacted.** Where the testator's will was drawn in 1895, and she died in 1900 and directed the "collateral inheritance tax" to be paid by the executor out of the *corpus* of the estate, this did not charge the estate with the federal inheritance tax of 1898. There was a clear disposition to charge the *corpus* of the estate with the collateral inheritance tax only, which was at that time the only legacy tax in existence. *In re Baker*, 21 Pa. Super. Ct. 536.

<sup>3</sup> A will provided that the executors were authorized and empowered to pay any or all of the legacies within one year after the decease of the testator "without any rebate or deduction whatever." The will was executed in 1884, and the court holds that this clause can hardly have been intended to apply to a succession or legacy tax although it was reaffirmed by a codicil executed after the passage of the statute. Apart from this the court holds that the words used would not have the effect of entitling the legatee to the legacy free of tax even if the will had been executed after the passage of the inheritance tax. The tax is paid on account of the legatee and in legal effect is precisely the same as if the legacy was to be paid over to the legatee intact and then the tax was to be collected from him. Strictly speaking, therefore, the tax is not a "rebate or deduction" from the legacy. The tax is not a tax upon the estate or legacy devised or bequeathed, but is a tax imposed upon the legatee for the privilege of succeeding to the property. It is merely for the convenience of the state to ensure certainty of collection of the duties cast upon the executors of paying the tax. *Jackson v. Tailer*, 41 Misc. Rep. 36, 83 N. Y. Suppl. 567.

**A direction in a will that an annuitant "is to receive not less than \$1,500 a year" is not of itself enough to show an intention to place the burden of the tax on the general estate and relieve the annuitant from the inheritance tax.** *In re Holbrook*, 3 Pa. Co. Ct. 265, 20 Wkly. Notes Cas. 69.

<sup>4</sup> *In re Swift*, 137 N. Y. 77, 87, 32 N. E. 1096, 18 L. R. A. 709, 64 Hun 639, 16 N. Y. Suppl. 193, 19 N. Y. Suppl. 292.

<sup>1</sup>*In re Gihon*, 169 N. Y. 443, 447, 612 N. E. 561, modifying 64 N. Y. App. Div. 504, 72 N. Y. Suppl. 1104.

<sup>2</sup>*In re Cummings*, 12 Pa. Co. Ct. 45.

<sup>3</sup>*Wirringer v. Morgan*, 12 Cal. App. 26, 106 P. 425.

[Validity of classification by relationship, see *ante*, s. 62.]

#### Sec. 304. Order of Probate Court as Protection.

A decree of distribution by the probate court ordering distribution without allowance for the inheritance tax is in general no protection to the executor who acts under it,<sup>1</sup> and neither is an allowance by the court of accounts omitting provision for the tax.<sup>2</sup>

The court holds that where executors have paid a legacy in good faith, relying upon a void order of the surrogate, they are personally liable. If the surrogate had no jurisdiction, then it is difficult to see how such decree could be a protection for anybody for anything done in pursuance thereof.<sup>3</sup>

<sup>1</sup>*Att. Gen. v. Rafferty*, 209 Mass. 321, 95 N. E. 747, the court assuming that the decrees were properly entered and that the probate court had jurisdiction and that the administrator acted in good faith. *In re Hacket*, 14 Misc. 282, 35 N. Y. Suppl. 1051.

<sup>2</sup>*Att. Gen. v. Stone*, 209 Mass. 186, 95 N. E. 395.

<sup>3</sup>*In re Wolfe*, 21 N. Y. Suppl. 522, reversing 15 N. Y. Suppl. 539.

#### Sec. 305. Aliens.—Strangers.

The Louisiana tax upon foreign heirs was sustained as a regulation of inheritance and the court says that as every state or nation may refuse to allow an alien to take either real or personal property, it follows that when it grants the privilege it may annex to the grant any conditions which it supposes to be required by its interests or policy.<sup>1</sup> The term "strangers" in the tax act means "all other persons" not included in a previous list of beneficiaries. So it may include a widow under a statute naming only descendants or collaterals.<sup>2</sup>

<sup>1</sup>*Scholey v. Rew*, 23 Wall. 331. See *ante*, s. 61.

California and Louisiana formerly had a tax on foreign heirs alone, and Iowa now discriminates heavily against non-resident aliens as collateral heirs or legatees. A similar Washington statute was repealed in 1911.

<sup>2</sup>*Succession of Baker*, (La. 1911,) 55 So. 714.

#### Sec. 306. Annuity.

Where a residuary estate was given in trust to pay an annuity, the court holds that the intention was that the annuitant should receive



the clear annual sum named in the annuity and therefore the tax must fall upon the residue.

*In re Bispham*, 6 Pa. Co. Ct. 459. See further, ss. 303, n. 2, 342.

### **Sec. 307. Annuity to Executor.**

The will provided that the executor and trustee should be paid from his estate the sum of \$1,500 annually, together with the commissions allowed by law, as long as he should act as executor, and the court holds under the New York statute of 1896, that this annuity is subject to the transfer tax.

*In re Huber*, 86 N. Y. App. Div. 458, 83 N. Y. Suppl. 769.

### **Sec. 308. Corporation to be Created.**

Where a non-resident left an interest in an estate to a corporation to be created, and no such corporation has ever been created, no tax can be levied upon the gift, as no interest can pass to a body corporate which has no existence.

*In re Chesebrough*, 34 Misc. Rep. 365, 69 N. Y. Suppl. 848. See, however, *In re Arnot*, 130 N. Y. Suppl. 197, where devise to corporation to be created was held exempt.

[Tax on institution, see *ante*, s. 280.]

### **Sec. 309. As between Life Tenant and Remainderman.**

Each legatee of income should in Pennsylvania pay the tax from his share unless otherwise expressly directed.<sup>1</sup> Under the New York statutes it is the duty of the executors and trustees to ascertain the value of the respective life estates and estates in remainder, and having done this they should compute the transfer tax and pay the same out of the property transferred. The result is that the life tenant loses during the continuance of his estate the interest upon the *corpus* of the trust so paid out, and eventually the remainderman receives his estate diminished by the amount of said payment. The court is not concerned with the question of whether this works out justice as between the life tenant and the remainderman. The legislative intention is clear that the transfer tax shall be paid out of the *corpus* of the trust estate and not out of the income. The court remarks that *In re Vanderbilt*, 172 N. Y. 69, dealt only with the contingent remainder and is therefore not strictly in point but that the principle announced therein is necessarily involved in life estates created by trusts.<sup>2</sup>

<sup>1</sup> *In re Brown*, 208 Pa. St. 161, 57 A. 360. The direction in a will "after deducting any and all necessary expenses to divide the said net income in equal shares among" certain persons results in deducting the inheritance taxes from the gross income, after which the net income is to be divided in equal shares among the life tenants. See *ante*, s. 229.

<sup>2</sup> *In re Tracy*, 179 N. Y. 501, 509, 72 N. E. 519, reversing 87 N. Y. App. Div. 215.

### **Sec. 310. Where no Next of Kin are Known.**

The decedent died in New York a native of Sweden, and inquiry failed to disclose his family or next of kin. The court holds that on his death his personal property vested in a public administrator, who was appointed, and his next of kin were entitled to the property upon proving their relationship. No such person has appeared, and no such person has been found to be in existence. There is the presumption, however, that he left next of kin, but there is no presumption that he left a widow or descendants. It is presumed, therefore, that the property vested in the next of kin of the deceased and is therefore taxable under section 220 of the New York tax law, and as it does not appear that it is exempt under section 221 of the tax law, the tax imposed by sub-division 6 of section 220 applies, and it is taxable at the rate of five per cent.

*In re Lind*, 132 N. Y. App. Div. 321, 117 N. Y. Suppl. 49.

### **Sec. 311. Lineal Descendants.**

In the New York statute of 1885 the words "lineal descendants" are restricted to descendants of the testator and do not extend to collateral heirs.

*In re Smith*, 5 Dem. Surr. (N. Y.) 90.

### **Sec. 312. Descendants of Collaterals.**

Under the New York statute of 1885 descendants of brothers and sisters are not intended to be exempt from the tax.

*In re Miller*, 5 Dem. Surr. (N. Y.) 132, 45 Hun 244.

### **Sec. 313. Children of Deceased Beneficiary.**

Where the statute provides that where a devisee dies before the testator his heirs inherit directly from the testator, then the property does not go to the children of the devisee as though he had survived the testator, and therefore the property passes directly from the decedent to the persons who are determined to be his

heirs by the application of these rules construing the statute. Therefore where a testator dies devising property to his mother, who died before the testator, leaving as heirs a brother and sister of decedent, the succession to these heirs is subject to a collateral inheritance tax.

*In re Hulett*, 121 Iowa 423, 96 N. W. 952, relying on *Suydam v. Voorhees*, 58 N. J. Eq. 157, 43 A. 4.

### **Sec. 314. Stepchildren.**

Legacies to stepsons may be taxable when not specifically exempted.<sup>1</sup> Two stepdaughters of the testatrix had always been recognized and treated like her own children. But the fact that the father is still living prevents them from being recognized as children and given an exemption.<sup>2</sup>

<sup>1</sup> *In re Hooper*, 6 Low. D. 560, 4 Ohio N. P. 186.

<sup>2</sup> *In re Stebbins*, 52 Misc. 438, 103 N. Y. Suppl. 563.

[Exemption of stepchildren is valid, see *ante*, s. 62, n. 3.]

### **Sec. 315. Where Relative was Both Nephew and Stepson.**

The will of one who died October 13, 1907, provided that her property should go to "relatives of my full blood only who would be entitled to receive my personal estate in case of my death unmarried and intestate." The contestant was the son of a deceased sister of the testatrix. After the death of his mother his father and the testatrix had intermarried and the question was whether he took as a nephew or a stepson. The court holds that if he had been included by name there would be no doubt that he would be taxable as a stepchild. As a stepchild he could not take under the statute and the will expressly provides that the property shall go to the relatives of full blood only, and therefore the respondent takes as a nephew as one of the class as though he took under the statute of distribution. The court says the transfer to the respondent was not made because of his relationship as a stepson but as a nephew and for the purposes of this case he must be treated solely as a nephew.

*In re Linkletter*, 134 N. Y. App. Div. 300, 118 N. Y. Suppl. 878.

### **Sec. 316. Son- or Daughter-in-Law.**

A legacy to a son-in-law may be subject to the inheritance tax on the ground that he is not a blood relation.<sup>1</sup> The husband of a

daughter may be treated as such although the daughter died before the decedent,<sup>3</sup> or even though the widower has married again before the death of the testator,<sup>3</sup> while the widow of a son may include the widow of a deceased adopted son.<sup>4</sup>

<sup>1</sup> *King v. Eidman*, 128 Fed. 815.

<sup>2</sup> *In re McGarvey*, 6 Dem. Surr. 145.

<sup>3</sup> *In re Ray*, 13 Misc. Rep. 480, 35 N. Y. Suppl. 481.

<sup>4</sup> *In re Duryea*, 128 N. Y. App. Div. 205, 112 N. Y. Suppl. 611. *Contra*, *In re Fisch*, 34 Misc. 146, 69 N. Y. Suppl. 493.

### Sec. 317. Executors or Beneficiaries.

The inheritance tax may by statute be charged to the executors,<sup>1</sup> or to the beneficiaries.<sup>2</sup>

<sup>1</sup> *In re Jones*, 5 Dem. Surr. (N. Y.) 30 (liability enforced by refusal to allow executor credit on his account). *United States v. Allen*, 9 Ben. 154, Fed. Cas. 14, 430 (U. S. St. 1862, ss. 111 and 112).

The executors are liable for a tax on a legacy to one of them. *State v. Brevard*, 62 N. C. 141.

**Penalty.** An executor who neglects to pay an award on a collateral inheritance tax is personally liable for the penalty incurred. *In re Allen*, 9 Pa. Co. Ct. 328.

The direction to the administrator to pay the duty implies that it is to be paid from the property or from the proceeds of the property of the decedent not applied to the satisfaction of the debts and administration expenses. *Appeal of Hopkins*, 77 Conn. 644, 60 A. 657.

[Liability of executors under transfer in contemplation of death, see *ante*, s. 130.]

<sup>2</sup> *Succession of Pargoud*, 13 La. Ann. 367. *Wilhelmi v. Wade*, 65 Mo. 39. *In re Gihon*, 169 N. Y. 443, 447, 62 N. E. 561, modifying 64 N. Y. App. Div. 504, 72 N. Y. Suppl. 1104. *In re Thomson*, 12 Phila. (Pa.) 36. (1878.) *In re Lotzgesell*, 62 Wash. 352, 113 Pac. 1105. *United States v. Tappan*, 10 Ben. 284, Fed. Cas. 16, 431 (payable by successor himself and not by his trustee if he have one). *United States v. Trucks*, 27 Fed. 541. *United States v. Kelley*, 27 Fed. 542 (suit against individual in possession). See *United States v. Pennsylvania Co.*, 27 Fed. 539. U. S. St. 1864 cancels that of 1862 and created no personal liability on the part of the legatee.

U. S. St. 1862 (12 U. S. St. at Large, c. 119, s. 112) was superseded by U. S. St. June 30, 1864, which omitted from the statute of 1862 the words "to be allowed for such payment by the person or persons entitled to the beneficial interest in respect of which such tax or duty was paid." The statute of 1866 provides that any tax paid "shall be deducted from the particular legacy or distributive share on account of which the same is charged." Under the statute of 1864, notwithstanding the omission of the language above quoted, the duties paid in respect of any particular legacies are as between the executors and the legatees in the settlement of the estate to be deducted from the legacies in respect of which they have been paid, or charged to the legatees respectively who are entitled to such legacies, and the amendment of 1866 was simply declaratory to avoid any doubt. *Goddard v. Goddard*, 9 R. I. 293, 297 (U. S. St. 1864).

**Specific Legatee.** The United States inheritance tax of 1864 should be charged to a specific legatee and in case the executor finds it difficult to deduct the same out of such a legacy the law would doubtless afford an adequate remedy. *Goddard v. Goddard*, 9 R. I. 293, 298.

### **Sec. 318. Payments of Tax Should Appear in Executor's Account.**

It was suggested by the lower court that the amount of the inheritance tax paid did not enter into the executor's account, as the amount of the tax on each legacy should be deducted from the legacy itself in settlement with the legatee. The court of appeals holds, however, that the executor should show in his account every payment made by him as executor. The distribution of these payments among the various legatees is a matter of subsequent arrangement between him and them when he comes to pay the legacies. In settling his account it would be better, doubtless, if the accountant should distribute the sum total of the inheritance taxes, showing just how much was chargeable against each legacy. But the failure to so distribute is no reason for disallowing the payment of the item in the account.

*Wyckoff v. O'Neil*, 72 N. J. Eq. 880, 67 A. 32.

[Allowance of account no protection to executor who has failed to pay tax, see *ante*, s. 304.]

### **Sec. 319. Adoption.**

A mere adoption will not give the adopted child the exemptions of legitimate issue,<sup>1</sup> though adoption with all the privileges of a son might be sufficient.<sup>2</sup> Adoption proceedings are strictly construed,<sup>3</sup> but need not occur under domestic law.<sup>4</sup> Adopted children may be taxed as descendants,<sup>5</sup> and the descendants of adopted children treated as descendants of the adopting father.<sup>6</sup>

<sup>1</sup>*Commonwealth v. Nancrede*, 32 Pa. St. (8 Casey) 389 (adopted son a collateral relative). *Kerr v. Goldsborough*, 150 Fed. 289, 80 C. C. A. 157 (adopted child not a lineal issue).

The word "children" does not cover adopted children. *In re Miller*, 110 N. Y. 216, 222, 18 N. E. 139, affirming 47 Hun 394.

Where a statute was passed decreeing that a certain child should be capable of inheriting as if born in lawful wedlock and was not related to the adopting parents, his estate was subject to a collateral inheritance tax. *Tharp v. Commonwealth*, 58 Pa. St. (8 P. F. Smith) 500, following *Commonwealth v. Nancrede*, 32 Pa. St. (8 Casey) 389. *Comm. v. Stump*, 3 P. F. Smith 132, is only a dictum.

Where a statute was passed authorizing one to adopt his illegitimate child to make him his heir, the court holds that this is simply an act of adoption and

not an act of legitimation. "That a legacy given to an adopted child who stands in the place of an heir would be subject to this tax is too plain for argument. The reason is that he is not a lineal descendant born in lawful wedlock. He has not the blood." *Per curiam*, in *Commonwealth v. Ferguson*, 137 Pa. St. 595, 601, 20 A. 870, 10 L. R. A. 210.

An act of the legislature declaring an illegitimate son to be the lawful heir and adopted son of his father, is an act of adoption and not of legitimation and does not exempt the estate passing from the father to such adopted son from the collateral inheritance tax. *In re Prinvince* (Orph. Ct.), 4 Pa. Dist. R. 591.

<sup>1</sup>A statute giving one "the rights, powers and privileges" of a son clearly exempted him from the payment of a collateral inheritance tax, especially where the statute further expressly provides that the adopted son shall be subject only to such tax as would be payable if he were the son of the adopting father. *Commonwealth v. Henderson*, 172 Pa. St. 135, 33 A. 368, 37 Wkly. Notes Cas. 344.

<sup>2</sup>Where certain adoption proceedings did not comply with the statute, it was urged that the attempt to adopt should be considered equitably as though it had been properly consummated. But the court replies that the proceeding for the collection of an inheritance tax is not in equity and that one cannot be made an heir of another by any such considerations. *Lamb v. Morrow*, 140 Iowa 89, 117 N. W. 1118, 18 L. R. A. N. S. 226.

<sup>3</sup>*In re Butler*, 58 Hun 400, 34 N. Y. St. 189, 12 N. Y. Suppl. 201 (under the act of 1887).

<sup>4</sup>La. St. 1906 laid taxes on four classes of persons: ascendants, descendants, collaterals and strangers. Adopted children are not related by blood, so that they are neither ascendants nor collaterals. On the other hand, as they are legal heirs of the estate they are not strangers. It follows, therefore, that they must be persons who by law are given the status of descendants if subject to tax at all. *Succession of Frigalo*, 123 La. Ann. 71, 48 S. 652.

<sup>5</sup>Cal. St. of 1893, c. 168, exempted from taxation any child legally adopted and any lineal descendant of the decedent. The court holds that a child of an adopted child is exempt under these provisions, as he takes by inheritance as issue of the adopted father. *Estate of Winchester*, 140 Cal. 468, 74 P. 10.

The court holds that where the statute gives an adopted child the same legal relation to the foster parent as to a child of his body and that the relation extends to the heirs and next of kin of the child, the artificial relation was given the same effect as the actual relation, and although the N. Y. St. 1896, c. 908, s. 221, does not mention the heirs and next of kin of adopted children, still the natural relation and the statutory relation are made one and the same as to the devolution of property. *In re Cook*, 187 N. Y. 253, 261, 79 N. E. 991, reversing 114 N. Y. App. Div. 718, 99 N. Y. Suppl. 1049. See, however, *post*, s. 321, n. 7.

A "widow of a son" includes the widow of a deceased adopted son of the testator. *In re Duryea*, 128 N. Y. App. Div. 205, 112 N. Y. Suppl. 611. *Contra*, *In re Fisch*, 34 Misc. 146, 69 N. Y. Suppl. 493.

### Sec. 320. Mutually Acknowledged Relation of Parent.

The exemption in the New York statute where the mutually acknowledged relation of a parent appeared, was construed as applicable in the cases cited,<sup>1</sup> and not in others.<sup>2</sup> The statute

may apply although no formal adoption ever took place,<sup>3</sup> and although the beneficiary was an adult at the inception of the relationship,<sup>4</sup> and it is not confined to illegitimate children,<sup>5</sup> or to persons of the blood of the decedent,<sup>6</sup> although the exemption will not include issue of the child.<sup>7</sup> This was amended in 1905 by restricting it to cases where the parents of the child were dead.<sup>8</sup> Rights of exemption under the original act of 1887 were saved by later statutes.<sup>9</sup>

<sup>3</sup> *In re Lane*, 39 Misc. Rep. 522, 80 N. Y. Suppl. 381.

Where a legatee was an orphan and had lived in a family of the testator since the age of six years, and was always treated like one of the family, she is one to whom the testator stood in the mutually acknowledged relation of a parent, although she was designated by the will as a "friend" and not a "daughter." *In re Wheeler*, 1 Misc. Rep. 450, 22 N. Y. Suppl. 1075.

The mutually acknowledged relation of parent was found to exist where the niece when twenty-two years old had gone to live with her aunt, was a member of the family for twenty-eight years, and always addressed her as "Auntie"; and where during her residence there the niece married and with her husband continued to live with her aunt, the testatrix, who supported the household. *In re Spencer*, 4 N. Y. Suppl. 395, 1 Con. Surr. 208.

The fact that the beneficiaries were taken into their testator's family in their infancy, were reared, educated and provided for as children, were called by her name and adopted the same, and were treated as her children, and that the testatrix spoke of and to them as her daughters and furnished them on their marriage with their wedding and outfit as is customary, is sufficient to bring them within the words of the statute. *In re Nichol*, 91 Hun 134, 36 N. Y. Suppl. 538.

Stepdaughters of a testatrix who had lived with her for a long time and called her "mother" were found to stand in the mutually acknowledged relation of parent, while another stepdaughter who was married and did not live with her did not come within that class, in *In re Capron*, 30 N. Y. St. 948, 10 N. Y. Suppl. 23.

"The appellant, from his earliest recollection, believed the testator to be his father, recognized him as such, and knew no other, and the man took him to his home as a child and treated him in all respects as a son. Their relations were parental, and their entire conduct was a mutual acknowledgment of their relation. The child was taken in helpless infancy, with no expectation of compensation for services. He was treated as a son, and was obedient to his foster father, and dependent upon him, and the statute requires no higher proof of mutual acknowledgment. The word 'mutual' in this statute has no abstruse signification. It means and requires 'reciprocity of action,' 'co-relation,' and 'interdependence,' and finds its best illustration and application in the relation existing between parents and children, which are always mutual." *Per Dykman, J.*, in *In re Butler*, 58 Hun 400, 34 N. Y. St. 189, 12 N. Y. Suppl. 201.

The court sustains the finding that a niece stood in the "mutually acknowledged relationship of a parent" to her uncle where it appears that she had been in her uncle's family for thirteen years and supported by him, although it also appears that she did not call her uncle and aunt father and mother, nor did they call

her daughter. It was also objected that the uncle did not account to the niece for the income received by him on her legacy under her grandfather's will. It is urged that this shows that he assumed to set off the expense of her support against such income. Where the niece had been thirteen years in the family of her uncle, supported wholly at his expense before she had any property whatever, it was natural that after the legacy had become payable to her the uncle should think it wise to apply that income to give her greater educational advantages than he felt himself able to afford. A father might have done the same, even if we assume that without authority from some court it would have been unjustified. *In re Davis*, 184 N. Y. 299, 77 N. E. 259, reversing 98 N. Y. App. Div. 546, 90 N. Y. Suppl. 244.

A child legally adopted under the laws of Massachusetts, who is taken into the testator's family at the age of two, is treated as a son and staid in the family for eleven years, until the testator's death, is in the mutually acknowledged relation of a parent. The court says that experience teaches us that children of three years recognize their parents and the court finds no difficulty in concluding that the appellant recognized the testator as his father, and that the testator recognized him as an adopted son for more than ten years. *In re Butler*, 58 Hun 400, 34 N. Y. St. 189, 12 N. Y. Suppl. 201.

<sup>2</sup>Where a maiden aunt is in possession of a farm as a housekeeper as tenant in common with her adult nephews, the acknowledged relation of parent was not found in *In re Sweetland*, 20 N. Y. Suppl. 310.

The mere fact that a transferee is described in a will as "my niece and adopted daughter" does not exempt her from the inheritance tax. Further evidence of the mutually acknowledged relation of a parent must be given. *In re Fisch*, 34 Misc. 146, 69 N. Y. Suppl. 493.

Where an aunt, a wealthy woman, took care of her two infant nieces and charged them out of their estate with all sorts of trivial expenses, the court finds that the mutually acknowledged relation of a parent and child did not exist under the statute of 1892, chapter 399. *In re Birdsall*, 22 Misc. Rep. 180, 49 N. Y. Suppl. 450, 2 Gibbons 293.

The court holds that the mutually acknowledged relation of parent did not exist where children lived with their uncle and aunt, and always referred to them as uncle and aunt, and the latter referred to the former as niece and the terms father, mother or daughter were never used. (The court relies upon *In re Davis*, 98 N. Y. App. Div. 546, 90 N. Y. Suppl. 244.) *In re Deutsch*, 107 N. Y. App. Div. 192, 95 N. Y. Suppl. 65.

The mere fact that the testator lived with his sister and her children as one family, that the household expenses were met out of a common fund to which each contributed, and that the sister died, and from that time one of the children had charge of the household affairs and they continued to live together as one family down to the death of the testator, and that the testator was very affectionate with his nieces, is not enough to show the mutually acknowledged relation of a parent, as the testator did not take them into his family and support and educate and maintain them. *In re Moulton*, 11 Misc. Rep. 694, 33 N. Y. Suppl. 578.

<sup>3</sup>*In re Stilwell*, 34 N. Y. Suppl. 1123. The court follows *In re Butler*, 58 Hun 400, 12 N. Y. Suppl. 201, and *In re Spencer*, 4 N. Y. Suppl. 395, and refuses to follow *In re Hunt*, 33 N. Y. Suppl. 256.

<sup>4</sup>*In re Beach*, 154 N. Y. 242, 249.



<sup>1</sup> *In re Nichol*, 91 Hun 134, 36 N. Y. Suppl. 538. *In re Beach*, 154 N. Y. 242, 249. *Contra*, *In re Hunt*, 86 Hun 232, 33 N. Y. Suppl. 256. See other cases *supra*, note 1.

<sup>2</sup> *In re Beach*, 154 N. Y. 242, 249.

<sup>3</sup> *In re Moore*, 90 Hun 162, 35 N. Y. Suppl. 782. *In re Bird*, 32 N. Y. St. 899, 11 N. Y. Suppl. 895, 2 Con. Surr. 376. Compare, however, as to issue of adopted children, *ante*, s. 319, n. 6.

<sup>4</sup> *In re Wheeler*, 115 N. Y. App. Div. 616, 100 N. Y. Suppl. 1044. *In re Harder*, 124 N. Y. App. Div. 77, 108 N. Y. Suppl. 154.

<sup>5</sup> *In re Thomas*, 3 Misc. Rep. 388, 24 N. Y. Suppl. 713.

### Sec. 321. Bastards. — Effect of Legitimization.

The words "lineal descendants born in lawful wedlock" might under some circumstances be given wide meaning to cover natural children.<sup>1</sup> An illegitimate child who has been legitimated may thus become entitled to the exemptions of a legitimate child,<sup>2</sup> although an act of legitimating passed after the death of the testator could have no effect on the inheritance tax.<sup>3</sup>

<sup>1</sup> *In re Miller*, 110 N. Y. 216, 222, 18 N. E. 139, affirming 47 Hun 394.

<sup>2</sup> *Commonwealth v. Gilkerson*, 18 Pa. Super. Ct. 516. *Commonwealth v. Ferguson*, 137 Pa. St. 595, 601, 20 A. 870, 10 L. R. A. 210, *quere*.

Pa. St. 1901, P. L. 639, has the effect of legitimating an illegitimate child as to its mother and conferring upon such child every right and privilege enjoyed by a child born to wedded parents. Therefore an illegitimate child need not pay a collateral inheritance tax on the property he takes as devisee of his mother. *Commonwealth v. Mackey*, 222 Pa. St. 613, 72 A. 250. See, however, *In re Wayne*, 2 Pa. Co. Ct. 93, 18 Wkly. Notes Cas. 10.

<sup>3</sup> *Comm. v. Stump*, 53 Pa. St. 132.

### Sec. 322. Loss of Tax Paid Unnecessarily Falls on Residue.

Where a collateral inheritance tax is improperly paid on land in Pennsylvania which the testator directed to be sold, a percentage of the tax cannot be deducted from the last legacy to be paid as such legacy's proportion of the collateral inheritance tax paid to the state, simply because the executors were appointed in Pennsylvania and the legatee came by counsel before the court and asked for payment in full, as happened in *In re Lewis*, 203 Pa. St. 211. The residuary legatees having permitted the tax to be paid they cannot now ask that a portion of it be deducted from this legacy to their relief. They ought to have protected themselves at the proper time.

*In re Shoenberger*, 221 Pa. St. 112, 114, 118, 70 A. 579, 19 L. R. A. N. S. 290.

## CHAPTER XXXIX.

### INVENTORY.

§ 323. Necessity.

§ 324. Of Property Outside State.

#### Sec. 323. Necessity.

The statutes usually compel the executor to file an inventory. Such a statute confers no discretion upon the executors<sup>1</sup> and the state has a right to an order that the executor's inventory be filed, and a judgment rendered in the absence of the inventory should be reversed even though it is claimed that the state obtained all necessary information by its examination of witnesses.<sup>2</sup> The fact that the testator in his will directed his executors not to make any returns of his property cannot be permitted to have the effect of nullifying the statute.<sup>3</sup>

<sup>1</sup> See *Hooper v. Bradford*, 178 Mass. 95, 97, 59 N. E. 678.

<sup>2</sup> Where a party makes a motion that an inventory be filed in a tax inheritance case and the judge says that he will take the motion under advisement, but does not either then nor afterward make an order for the inventory but hears the case and enters final judgment without doing so, this amounts to a denial of the motion. *People v. Sholem*, 244 Ill. 502, 91 N. E. 704.

<sup>3</sup> *In re Morris*, 138 N. C. 259, 50 S. E. 682.

#### Sec. 324. Of Property Outside State.

Under the Connecticut act of 1897 it was proper for the probate court to order the administrator to file an inventory and appraisal, including all the personal property wherever situated, although the administrator could not be held liable upon his final account for the value of personal property without the state of which it has been impossible for him to procure possession.

*Appeal of Bridgeport Trust Co.*, 77 Conn. 657, 60 A. 662.

## CHAPTER XL.

### APPRAISAL.

- § 325. By what Court.
- § 326. Effect of General Law.
- § 327. Appointment of Appraisers.
- § 328. Appointed in what County.
- § 329. When Appointed.
- § 330. Removal of Appraisers.
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- § 332. Construction of Will.
- § 333. Each Interest Separately Appraised. — Residue.
- § 334. As of what Date.
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- § 336. Reappraisal.
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- § 339. Rule in Absence of Specific Provision.
- § 340. Choses in Action. — Bequest to Debtor.
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- § 344. Statute Providing no Method for Ascertaining Value of Life Estate.
- § 345. Death of Life Tenant before Appraisal.
- § 346. Remainders.
- § 347. Remainder after Remarriage.
- § 348. Power to Order Production of Papers.
- § 349. Appeal.
- § 350. Appraisal has no Effect on Liability.

#### Sec. 325. By what Court.

Where the statute contains no express direction as to who shall compute the tax or the manner of computation, the duty is implied in the court of probate. The tax should be computed by the jurisdiction of the domicile notwithstanding ancillary probate may be also necessary as to property existing outside of the domicile.<sup>1</sup> A provision that the controller shall countersign receipts for taxes gives him no authority to revise its amount.<sup>2</sup>

<sup>1</sup> *Appeal of Hopkins*, 77 Conn. 644, 60 A. 657.

<sup>2</sup> *Becker v. Nye*, Cal. App. 1908, 96 P. 333.

### Sec. 326. Effect of General Law.

Where the sections of the inheritance tax law on appraisals are vague they may be read in view of the general law.

*Commonwealth v. Gaulbert*, 134 Ky. 157, 119 S. W. 779.

### Sec. 327. Appointment of Appraisers.

The appointment may be made upon petition of an interested party,<sup>1</sup> as where it is the duty of the executor to apply for an appraisal,<sup>2</sup> by a state officer<sup>3</sup> or by the court,<sup>4</sup> or without petition by the court of its own motion,<sup>5</sup> and before the existence of claims against the estate has been ascertained.<sup>6</sup> The appointment may be required by mandamus in a proper case.<sup>7</sup> No notice of the appointment is necessary unless the statute requires it.<sup>8</sup>

<sup>1</sup> *Dixon v. Russell*, 79 N. J. L. 490, 76 A. 982, reversing 78 N. J. L. 296, 73 A. 51.

An application of the state comptroller upon a verified petition setting forth every fact upon which the jurisdiction of the surrogate to act depended, made upon the information and belief, is a proper application to force the surrogate to appoint appraisers. *Kelsey v. Church*, 112 N. Y. App. Div. 408, 98 N. Y. Suppl. 535.

**Not Judicial.** The office of transfer tax appraiser is not judicial in character within the civil service law. *Weeks v. Kraft*, 129 N. Y. Suppl. 690.

<sup>2</sup> *Fraser v. People*, 3 N. Y. Suppl. 134, 6 Dem. Surr. 174.

<sup>3</sup> N. Y. St. 1896, c. 368, a. 10, ss. 229 and 234, provide for the appointment of tax appraisers and tax assistants by the comptroller of the state. The court holds that these sections invest the comptroller with absolute power of appointing and removing such official. The transfer tax assistant, however, is connected with the administration of the surrogate's office and the statute therefore plainly provides for the joint action of both officials in the selection and control of this clerk. The surrogate's power, however, is limited to a recommendation, and if the recommendation is not satisfactory the comptroller is not compelled to accept it and make the appointment and the position remains vacant. *Duell v. Glynn*, 191 N. Y. 357, 84 N. E. 282, affirming 122 N. Y. App. Div. 314, 56 Misc. 41, 106 N. Y. Suppl. 716.

<sup>4</sup> The court refers to the fact that the practice as to appraisal throughout the state has not been uniform, some judges taking the inventory and appraisement as the basis, while others cause an appraisement to be made under the inheritance tax law and still others resort to both methods. Cal. St. 1905, c. 314, s. 5, provides for the ascertainment of the value of life estates and future estates by the appraiser to be appointed by the court, and the court of appeals expresses the opinion that it would be better to appoint appraisers in all cases. *Becker v. Nye*, Cal. App. 1908, 96 P. 333. See, however, *In re Sondheim*, 66 N. Y. Suppl. 726, under St 1900, c. 658, taking away the power of the surrogate to appoint appraisers.

<sup>5</sup> As the surrogate may of his own motion appoint an appraiser without petition his authority is not limited because the petition is presented by a competent

### Sec. 333. Each Interest Separately Appraised. — Residue.

The appraisal should value each interest separately.<sup>1</sup> It is the duty of an appraiser under the New York statute of 1885 to fix the value only of property of persons taking by succession from the decedent, and the appraisers need not fix the value of the whole estate of the testator.<sup>2</sup> The appraiser should show the value of the estate received by each residuary legatee under the will, and in doing so should deduct the gifts and legacies preceding the residuary clause of the will.<sup>3</sup>

<sup>1</sup> *In re Burkhart*, 25 Pa. Super. Ct. 514.

Where there is a life estate and remainder and the executors pay the tax on the whole estate on the death of the testator, there is no requirement that the values of the life estate and remainders respectively shall be appraised separately. *In re De Borbon*, 211 Pa. St. 623, 61 A. 244.

<sup>2</sup> *In re Jones*, 5 Dem. Surr. (N. Y.) 30.

<sup>3</sup> *Ayers v. Chicago Title & Trust Co.*, 187 Ill. 42, 58 N. E. 318.

### Sec. 334. As of what Date.

It is the nearly universal rule that property must be appraised as of the death of the testator.<sup>1</sup> The appraisal will not include income received after the testator's death,<sup>2</sup> and changes of value after the death of the testator are immaterial on appraisal.<sup>3</sup>

<sup>1</sup> *Hooper v. Bradford* 178 Mass. 95, 59 N. E. 678. *In re Vivanti*, 138 N. Y. App. Div. 281, 122 N. Y. Suppl. 954, reversing 63 Misc. 618, 118 N. Y. Suppl. 680 (good will).

The report of an appraiser is defective in not stating the value of the property subject to tax on the date of the death of the testator. *In re Earle*, 74 N. Y. App. Div. 458, 77 N. Y. Suppl. 503, affirming 71 N. Y. Suppl. 1038.

As the inheritance tax is a tax upon succession and not upon property the true test of value is the value of the estate at the time of the transfer of title and not its value at the time of the transfer of possession. *In re Davis*, 149 N. Y. 539, 547, 44 N. E. 185, affirming 91 Hun 53.

[Income after death not included, see *ante*, s. 179.]

<sup>2</sup> *Hooper v. Bradford*, 178 Mass. 95, 59 N. E. 678. *In re Vassar*, 127 N. Y. 1, 827 N. E. 394, reversing 58 Hun 378, 12 N. Y. Suppl. 203. See *ante*, s. 179.

<sup>3</sup> *In re Hartman*, 70 N. J. Eq. 664, 668, 62 A. 560. *In re Vassar*, 127 N. Y. 1, 8, 27 N. E. 394, reversing 58 Hun 378, 12 N. Y. Suppl. 203. *Comm. v. Smith*, 20 Pa. St. (8 Harris) 100. *Comm. v. Freedley*, 21 Pa. St. (9 Harris) 33. See, however, *post*, s. 335, n. 2, 3.

A sale above the appraised value is not a reason for increasing the appraisal as this should be treated as an increase in value after the death of the decedent. *In re Rice*, 56 N. Y. App. Div. 253, 68 N. Y. Suppl. 1147, affirming 61 N. Y. Suppl. 911. *In re Bruce*, 59 N. Y. Suppl. 1083.

**Sec. 335. As of what Date Future Interests are Appraised.**

Vested remainders are to be appraised on their value at the testator's death,<sup>1</sup> while the determination of the value of future uncertain interests may be postponed till the happening of the event,<sup>2</sup> when the appraisal may proceed on the basis of the full value of the property at that time.<sup>3</sup>

<sup>1</sup>*In re Kingman*, 220 Ill. 563, 565, 77 N. E. 135. *Howe v. Howe*, 179 Mass. 546, 551, 55 L. R. A. 626. *Dow v. Abbott*, 197 Mass. 283, 288, 84 N. E. 96 (deducting value of life interest). *In re Meyer*, 83 N. Y. App. Div. 381, 82 N. Y. Suppl. 329. *In re Davis*, 149 N. Y. 539, 547, 44 N. E. 185, affirming 91 Hun 53.

Under Ill. St. 1895, p. 301, s. 2, "and the property so passing shall be appraised immediately after the death," the words "after the death" referred to the death of the testator and not to the death of the life tenant. *Ayers v. Chicago Title & Trust Co.*, 187 Ill. 42, 58 N. E. 318.

The present value of vested remainders is capable of ready computation by the annuity tables, and they are therefore subject to present taxation. *In re Dows*, 167 N. Y. 227, 233, 60 N. E. 439, 52 L. R. A. 433, 88 Am. St. Rep. 508, affirming 60 N. Y. App. Div. 630 (affirmed *sub nomine*, *Orr v. Gilman*, 183 U. S. 278, 22 S. Ct. 213, 46 L. Ed. 196).

The will directed the executor to pay all the collateral inheritance taxes on all the devises, bequests and legacies "as soon after my decease as the same can conveniently be done." Under this provision the executor paid the tax on the entire estate at its valuation at that time. Subsequently, the life tenant having died, the state claimed the tax on the remainders on the ground that it was not due until the remainders came into possession, and that the value of the estate having increased in the meantime the tax is payable on its present value. The court says that Pennsylvania statute 1887, P. L. 79, section 3, in the words "shall not be payable" means only "shall not be demandable" by the state, as the right of the remaindermen to pay sooner is expressly given in the proviso to the same section; and that the tax having been paid on the value at the death of the testator no further tax can be now collected. *In re De Borbon*, 211 Pa. St. 623, 61 A. 244.

**The Maryland Rule.** Where a Maryland testator died leaving his property in trust for the life tenant and on her death to be disposed of as she might by will direct, and the life tenant did leave property by will, the inheritance tax on her death should be reckoned on the value of the property at that time although it had doubled in value while in the hands of the trustees. The court holds that Md. code, a. 81, s. 117, provides that the tax is imposed upon the clear value of all estates at the time of transfer or receipt by the collateral beneficiary. *Fisher v. State*, 106 Md. 104, 66 A. 661. See, however, *ante*, s. 334, n. 3.

<sup>2</sup> *People v. McCormick*, 208 Ill. 437, 70 N. E. 350, 64 L. R. A. 775. *Howe v. Howe*, 179 Mass. 546, 550, 55 L. R. A. 626. *In re Sloane*, 154 N. Y. 109, 47 N. E. 978, 19 N. Y. App. Div. 411, 46 N. Y. Suppl. 264 (remainder on remarriage). *In re Willing*, 11 Phila. 119. *In re Kingman*, 220 Ill. 563, 565, 77 N. E. 135. See *ante*, ss. 233, 234.

Where the will left all the property to the wife for life and the remainder to an infant, and where it appeared that the infant's estate could not be appraised

at the present time, it is improper to appoint a special guardian for the infant. *In re Post*, 5 N. Y. App. Div. 113, 38 N. Y. Suppl. 977.

**Report and Security.** Tenn. St. 1893, c. 189, s. 3, does not contemplate that persons holding contingent interests shall make the report and give security within the year from the death of the decedent. See *Harrison v. Johnston*, 109 Tenn. 245, 70 S. W. 414.

**The Wisconsin statute was attacked** on the ground that it attempted to impose a tax on transfers limited to vest on contingencies which may never happen, or to persons not in being or ascertainable, and making the tax due and payable forthwith out of the property transferred, by compelling parties to pay such tax on defeasible estates which they may never own and in contemplating the payment of penalties before any opportunity is offered to pay the tax. The court replies that the law does not operate to enforce the assessment and payment of the tax on interests or estates not vested, or on those whose value cannot be ascertained by reason of the uncertainties of contingencies. Payment of the tax on such transfers is expressly postponed until the beneficiary comes into the actual possession or enjoyment thereof. The claim that the present owners of defeasible estates are compelled to pay the tax on the whole estate is not well founded, for provision is made for reimbursing them should it happen that such estates and interests should be abridged, defeated or diminished. [Section 13, subdivision 31.] *State v. Pabst*, 139 Wis. 561, 587, 121 N. W. 351.

**Change of Interest on Marriage.** It is claimed that it was impossible to ascertain the value of an estate given to one until she marries when she was to have a different interest, as no one could say how long she would remain unmarried. The court, however, observes that when a particular individual claims an exemption from burdens which the law imposes upon all alike and bases his claim upon provisions of the statute which refer exclusively to the methods to be employed, it is the duty of the court to construe these provisions so as if possible to give effect to the statutory intent. That therefore when the valuation takes place it is to be made as of the date of the testator's death. The court avoids the difficulty by deciding that the probate court should determine what is the value of each instalment as it is actually paid to the beneficiary. From the value of the first payments should be deducted the exemption of ten thousand dollars and the tax computed upon the remainder. This avoids a possible result that the custodians of the estate would be at liberty to transfer it to the beneficiaries in instalments and in the meanwhile be unable to collect any tax whatever. *State v. Probate Court*, 112 Minn. 279, 128 N. W. 18, 20. The court relies somewhat on *In re Millward*, 6 Misc. (N. Y.) 425, 27 N. Y. Suppl. 286.

<sup>1</sup> *In re Connolly*, 38 Misc. Rep. 533, 77 N. Y. Suppl. 1113. *In re Goelet*, 78 N. Y. Suppl. 47. See, however, *ante*, s. 334, n. 3.

## Sec. 336. Reappraisal.

One appraisal exhausts the statutory authority for an appraisal,<sup>1</sup> even where property has been omitted on the first appraisal,<sup>2</sup> except for express statutory authority for a reappraisal,<sup>3</sup> as where property is omitted,<sup>4</sup> or in case of fraud or error,<sup>5</sup> or in case of

future<sup>6</sup> or unascertained interests,<sup>7</sup> or where the report of the original appraiser is insufficient to enable the court to fix the tax.<sup>8</sup>

<sup>1</sup>This assessment of the appraiser is final and it does not admit of opening to take any additions to the clear value of property once assessed. That property is vested in the heir or devisee and cannot be reassessed for the purpose either of increasing or diminishing the value assessed by the appraiser. *Commonwealth v. Freedley*, 21 Pa. St. (9 Harris) 33.

<sup>2</sup>*In re Moneypenny*, 181 Pa. St. 309, 37 A. 589

<sup>3</sup>The district court may order a second appraisement of the property where the state was not a party to the first appraisement and on showing error in proceedings theretofore had to correct the error by means of a new appraisement. *McGhee v. State*, 105 Iowa 9, 74 N. W. 695.

**A motion may be made to remit** the report of an appraiser back to the appraisers before the court has acted upon it, for the introduction of additional proof. *In re Kelly*, 29 Misc. Rep. 169, 60 N. Y. Suppl. 1005.

<sup>4</sup>*In re Smith*, 23 N. Y. Suppl. 762 (property withheld from the notice of the appraiser).

The authority to a surrogate to appoint an appraiser "as often as occasion may require" has for its object to collect the tax on the whole taxable estate; and where all the assets have been appraised and the tax fixed to cover any omission by additional or supplemental appraisals and when such omissions are discovered upon the new appraisal, property of the decedent which had not been appraised at the previous proceeding was properly included. But the appraiser has no authority to increase the appraisal on property which was included in the former appraisal, even though the executor had since the former appraisal actually received for such property respective sums for which they were valued in the new appraisal. The court treats this difference as an increase in value subsequent to the date of the death of the decedent. *In re Rice*, 56 N. Y. App. Div. 253, 68 N. Y. Suppl. 1147, affirming 61 N. Y. Suppl. 911.

**Where property was brought to the attention of the appraisers** and is not included in the appraisal a new appraisal under section 230 is not authorized on the ground that the property was omitted from the former appraisal. *In re Crerar*, 56 N. Y. App. Div. 479, 67 N. Y. Suppl. 795, 9 N. Y. Ann. Cas. 101.

<sup>5</sup>The New York statute of 1896 provides for a reappraisal if an appraisal has been fraudulently, collusively or erroneously made. Where no appraisal is made at all for the reason that both appraiser and surrogate took the view which proved to be mistaken, that the bequest was not subject to tax, this is not within the statute and therefore a reappraisal cannot be had under this section. *In re Niven*, 29 Misc. Rep. 550, 61 N. Y. Suppl. 956. See *Morgan v. Warner*, 162 N. Y. 612, 57 N. E. 1118, affirming 45 N. Y. App. Div. 424. Remedy by reappraisal in case of fraud is not exclusive, but comptroller may appeal.

**Sale above Price Fixed on Appraisal.** Reappraisements will not be ordered in the absence of evidence of mistake or fraud simply because at public auction the property was sold for a price exceeding the appraisal. *In re Bruce*, 59 N. Y. Suppl. 1063. *In re Rice*, 56 N. Y. App. Div. 253, 68 N. Y. Suppl. 1147, affirming 61 N. Y. Suppl. 911.

<sup>6</sup>*State v. District Court*, 41 Mont. 357, 109 P. 438.



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<sup>6</sup>*State v. District Court*, 41 Mont. 357, 109 P. 438.

N. J. St. 1893, c. 210, s. 4, provides that all taxes imposed by the act shall be due at the death of the testator unless otherwise provided and it was claimed that the necessary effect of this language was that the act does not provide for the imposition of a tax which cannot be determined at the death of the testator. But this contention fails to take account of the phrase in this fourth section that the tax imposed by the act shall be due and payable at the death of the testator unless otherwise provided. It also fails to take account of the provision of section 13, to the effect that in order to fix the value of property subject to the tax, the surrogate or register of the prerogative court shall "appoint an appraiser as often as and whenever the occasion may require." The court relies on similar provisions in the New York statute as construed in *In re Stewart*, 131 N. Y. 274. *Hoyt v. Hancock*, 65 N. J. Eq. 688, 55 A. 1004.

<sup>7</sup>Where the widow is given power to appropriate the residue to her own use for life with the remainder over of the surplus, the amount of it and the tax upon it can only be ascertained after her death. *Appeal of Nieman*, 131 Pa. St. 346, 351, 18 A. 900.

The testatrix died in 1891, and the appraisal was had then under the existing law of the interests of the beneficiaries, but the tax on the interests of certain contingent remainders was postponed, as it was not then known and could not then be ascertained to whom the shares would ultimately pass. In 1902 the legatee to whom the property was given when she became thirty years of age reached that age and the application was made to fix the tax on her share. The court holds that the language in the statute of 1901, chapter 173, "where the taxation thereof has been held in abeyance," clearly makes the section apply retroactively and that therefore the appraisal must take place not in accordance with the valuation of 1891, but that a new appraisal was necessary. *In re Hosack*, 39 Misc. Rep. 130, 78 N. Y. Suppl. 983.

Where an appraiser reports that remaindermen were indefinite and uncertain, and that the tax could not then be determined and this report is confirmed in 1894, the court has no power to appoint another appraiser in 1898. The report was the final determination of the subject. *In re Lawrence*, 96 N. Y. App. Div. 29, 88 N. Y. Suppl. 1028.

<sup>8</sup>*Denver v. Watson*, (Colo. 1911,) 118 P. 979.

### Sec. 337. Test of Value.

The appraisal should endeavor to fix the real market value of the property rather than its assessed value,<sup>1</sup> and on this issue the appraisers should consider the current market quotations under ordinary conditions,<sup>2</sup> without considering the effect on the market of a forced sale of the holdings of the estate.<sup>3</sup> They may consider the net income,<sup>4</sup> together with other proper evidence,<sup>5</sup> such as the agreement of the owners,<sup>6</sup> and actual sales,<sup>7</sup> and the opinion of the executor, but not declarations of the testator.<sup>8</sup> The appraisal of an estate must be based on some definite evidence of the existence as well as the value of the property.<sup>9</sup>

<sup>1</sup>"Value," "appraised value" and "actual market value" means in each case a fair market value and not the assessed value of the property fixed for the purpose of ordinary taxation. *McGhee v. State*, 105 Iowa 9, 74 N. W. 695.

<sup>2</sup>"The quotation of the stock exchange may be temporarily uncertain and untrustworthy, if the sales thereon are suddenly affected for speculative purposes, or by the forcing upon the market and to sale of large blocks of stock in an extraordinary manner, with no explanation of such action, and where the purpose of it is left to the conjecture of those dealing in the stocks; but such quotations may be a fair and safe guide when they are taken for a reasonable period of sales made in the usual and ordinary course of business." *Per Magruder, J.*, in *Walker v. People*, 192 Ill. 106, 112, 61 N. E. 489.

**Practice.** There is an elaborate opinion as to the practice on appraisal under the New York statute of 1887 in *In re Astor*, 20 Abb. N. Cas. 405, 6 Dem. Surr. 402, 14 N. Y. St. 478, 2 N. Y. Suppl. 630.

<sup>3</sup>"Clear market value" does not mean the selling price of property at a forced or involuntary sale so the appraisal may be made at the price at which small blocks of stock held by the estate were sold at or about the date of the death of the decedent, and the appraiser should not consider the fact that the estate held large blocks of stock which if all forced on the market at the death of the decedent would have depressed the market price of the stock. *Walker v. People*, 192 Ill. 106, 61 N. E. 489.

<sup>4</sup>*In re Kaas*, 5 Pa. Co. Ct. 583.

<sup>5</sup>Appraisers may use the quotations on public exchanges, private sales of such property, testimony as to the actual value of the same and their own knowledge of the subject matter. *Walker v. People*, 192 Ill. 106, 61 N. E. 489.

<sup>6</sup>The court holds that there was no authority for fixing the value of the good will in a business at the amount of the decedent's share of the profits of the business for the year immediately preceding. The amount fixed by the agreement of the parties at the time must determine the value. What is to be determined is the value of the good will as of the time of the decedent's death. *In re Vivanti*, 138 N. Y. App. Div. 281, 122 N. Y. Suppl. 954, reversing 63 Misc. 618, 118 N. Y. Suppl. 680.

<sup>7</sup>It appeared that the devisee of real property had sold it for the best price that she could obtain, and therefore the court holds it unjust to fix the price much larger than that simply on account of the evidence of a real estate appraiser. *In re Arnold*, 114 N. Y. App. Div. 244, 99 N. Y. Suppl. 740, 37 Civ. Proc. Rep. 177.

The average sales of stock for the three months first prior to the decedent's death is a proper way to ascertain the value of the stock under the New York statute of 1891, chap. 34, sec. 1. *In re Crary*, 31 Misc. Rep. 72, 64 N. Y. Suppl. 566. See also, *Walker v. People*, 192 Ill. 106, 61 N. E. 489.

<sup>8</sup>*Morgan v. Warner*, 162 N. Y. 612, 57 N. E. 1118, affirming 45 N. Y. App. Div. 424.

<sup>9</sup>The testimony of one hostile witness that ten years before the death of the testator he was shown by the testator a box containing securities which the testator then stated amounted to \$420,000, and that five years prior to the death of the testator the witness was taken to a safe deposit vault and shown a box of securities which the testator stated were worth \$700,000, which the witness did not handle, estimate or count, is insufficient as a basis for inheritance tax pro-

ceedings. In addition to this, accounts with brokers and with a national bank showing considerable amounts of money passing through the account are insufficient, especially where it appears that the testator was speculating in the stock market. *In re Kennedy*, 113 N. Y. App. Div. 4, 99 N. Y. Suppl. 72.

### **Sec. 338. Value Received by Beneficiary the Test.**

An appraisalment should not be made on the basis of the entire value of a decedent's property at the time of his death, but rather on the value of the estate received by each person under the will. in those states where the tax is imposed on the beneficiaries rather than on the estate.

*Ayers v. Chicago Title & Trust Co.*, 187 Ill. 42, 58 N. E. 318.

### **Sec. 339. Rule in the Absence of Specific Provision.**

Where the statute makes no specific provision for a case exactly like the one in question the values can be ascertained according to the method pointed out for similar cases.

*Dow v Abbott*, 197 Mass. 283, 288, 84 N. E. 96.

### **Sec. 340. Choses in Action. — Bequest to Debtor.**

Claims or other choses in action must be appraised at their actual market value, which may be nothing where the debtor is worthless and the testator bequeaths his debt to him.<sup>1</sup> So a worthless claim should be entirely barred from consideration,<sup>2</sup> or it may be excluded from immediate appraisal when subject to genuine litigation.<sup>3</sup> An honest, prudent compromise may determine its value. Where an administrator makes an honest and prudent compromise of a claim of the estate against another, the claim will not be appraised at a greater value than the compromise.<sup>4</sup>

<sup>1</sup> Where a testator held notes against certain relatives and by his will the notes and the amounts due thereon were given to the makers of the notes, and the directors were directed to cancel and surrender the notes to the makers without payment, the court holds that as the makers of the notes were insolvent it is fair to appraise the legacy as valueless. It was claimed that notwithstanding the insolvency of the makers inasmuch as the notes were given as legacies to the makers themselves they should be assessed at their fair value. But the court holds that under section 230 of the statute "fair market value" is the test. No such exception of cases where promissory notes are given to their makers is made by the statute. *Morgan v. Warner*, 162 N. Y. 612, 57 N. E. 1118, affirming 45 N. Y. App. Div. 424.

Where the estate has a claim against a beneficiary, but of a less amount than the beneficiary is entitled to under the will, the claim should be appraised. *In re Smith*, 14 Misc. Rep. 169, 35 N. Y. Suppl. 701. See further, *ante*, s. 340.

<sup>1</sup> *In re Manning*, 160 N. Y. 449, 62 N. E. 565, affirming 59 N. Y. App. Div. 624.

<sup>2</sup> *In re Skinner*, 106 N. Y. App. Div. 217, 94 N. Y. Suppl. 144, modifying 45 Misc. 559, 92 N. Y. Suppl. 972.

Where the administrator had brought suit on a note made payable to the intestate which the maker of the note claimed had been paid and litigation was still pending at the time of the appraisal, it was the duty of the surrogate to exclude this claim from the valuation at the time, reserving it for future appraisal in case the administrator succeeded in collecting it. *In re Westurn*, 152 N. Y. 93, 103, 46 N. E. 315, reversing 8 N. Y. App. Div. 59.

<sup>4</sup> *In re Thomas*, 39 Misc. Rep. 223, 79 N. Y. Suppl. 571.

### Sec. 341. Inactive Securities. — Good Will.

Where shares of stock are not listed upon the stock exchange or sold in the open market, the only way to ascertain their value is to consider the property they represent and its income,<sup>1</sup> or sales of the stock though infrequent,<sup>2</sup> or expert evidence.<sup>3</sup> The court approves the suggestion that the proper rule for ascertaining the value of good will based on earnings would be to multiply the net earnings by a certain number of years, depending on the nature of the business, and where a net profit upon a comparatively small capital was about \$26,000 per annum, and it was not a business that depended upon any special qualifications in the decedent, the court estimates the value at about three times the annual net profits.<sup>4</sup>

<sup>1</sup> *In re Jones*, 172 N. Y. 575, 586, 65 N. E. 570, 60 L. R. A. 476, reversing 69 N. Y. App. Div. 237, 74 N. Y. Suppl. 702 (joint stock association).

Certain stock was valued at \$1,150 per share and the county court valued it at \$1,408.45 per share, the face value being \$1,000 per share. The law requires that the tax should be assessed on the clear market value of the property. It appeared that there had been no sales of the stock in the market, but that the decedent had dealt with the stock on the basis of its book value, and the transfers shown were apparently made in reliance on the book value. Evidence was introduced showing the dividends declared and paid for a period of years before the death of the testator, and the value of the corporation assets during that time. In the deed of gift the decedent declared the book value of 2,840 shares of stock to be four million dollars. The court finds that the facts regarding the business of the corporation and its property furnish a basis for valuation, and are sufficient to sustain the conclusion of the trial court. *State v. Pabst*, 139 Wis. 561, 594, 121 N. W. 351.

**Patent Medicine Company. — Trade Secrets.** Where stock had no market value, as the corporation made porous plasters and medicines dependent on certain trade secrets, the earning power of the corporation is competent evidence of its value and is to be considered in determining the valuation to be placed upon the stock for the purposes of taxation. Where it is impossible for an appraiser to ascertain the market value of the stock of a corporation by reason of the fact that there is none, the state does not thereby lose the tax upon the

transfer. The ownership of secret receipts is not tangible and is to some extent of uncertain and precarious value, dependent upon the good faith of those who possess the secret. Still a large portion of their value lies in judicious advertising and in the name under which they have sold, and therefore these secret receipts are properly to be considered in estimating the value. *In re Brandreth*, 28 Misc. Rep. 468, 59 N. Y. Suppl. 1092.

<sup>2</sup> *In re Proctor*, 41 Misc. Rep. 79, 83 N. Y. Suppl. 643.

Where a manufacturing company paid eight per cent dividends during the first year of its incorporation its stock is not necessarily worth par in view of sales during the year at fifty (\$50) dollars a share. *In re Smith*, 71 N. Y. App. Div. 602, 76 N. Y. Suppl. 185.

<sup>3</sup> *In re Curtice*, 111 N. Y. App. Div. 230, 97 N. Y. Suppl. 444, affirmed in 185 N. Y. 543, 77 N. E. 1184.

<sup>4</sup> *In re Keahon*, 60 Misc. 508, 113 N. Y. Suppl. 926. See further, *ante*, s. 178.

### Sec. 342. Annuities.

A definite annuity is properly valued at its worth at the testator's death, in the light of the legatee's probability of life at that time.<sup>1</sup> Where a testator directed his executors and trustees to pay over to his sister such sums as with the income of her own property should give her a net annual income of \$10,000, the court ruled that she was to be taxed on an annuity to the amount of the difference between \$10,000 and her net annual income at the death of the testator. The objection was made that the sum bequeathed was neither an annuity nor a life estate, as it was of an uncertain amount and liable to fluctuate from year to year. The court takes the position that it did not appear how great the fluctuations might be and it might be treated as an annuity of \$10,000 a year subject to reduction, so that the value of the interest might be treated as an annuity of \$10,000 a year.<sup>2</sup>

<sup>1</sup> *Minot v. Winthrop*, 162 Mass. 113, 126, 26 L. R. A. 259. *In re Rothschild*, 72 N. J. Eq. 425, 65 A. 1118, 71 N. J. Eq. 210, affirming 71 N. J. Eq. 210. See, however, *In re Hall*, 36 Misc. 618, 73 N. Y. Suppl. 1124, where remainder interest valued by deducting value of annuity actually enjoyed by annuitant who lived longer than calculated by the annuity tables.

A tax on an annuity as covered in section 230 of the New York statute should be ascertained by fixing the value under the insurance tables and then computing the amount of the transfer tax thereon, which becomes payable forthwith out of the fund set aside for creating the annuity. The method of returning to the estate the tax so paid by the trustees is as follows: "Take for illustration an annuitant whose probable duration of life is ten years. The trustees would deduct from each annual payment as made one-tenth of the tax and restore it to the residuary estate." Where the death of the annuitant took place before the tax had been restored to the estate entirely, any portion of a transfer tax not restored to the estate by the process indicated at the time of the annuitant's death would be a

loss which the estate must sustain. *In re Tracy*, 179 N. Y. 501, 509, 72 N. E. 519, reversing 87 N. Y. App. Div. 215.

The personal property was limited on the life of the testator's widow subject to an annuity to be paid to his sister. It was claimed that from the life estate should be deducted the actual amount of principal necessary to produce annuities at the rate of five per cent per annum. The court, however, holds that the proper method is to treat the present values of the annuities as specific legacies bequeathed to the annuitants deducted from the residuary personal estate, on the theory that the widow's life interest is limited on the remainder only. In effect her interest is ascertained to be the present value of the life estate in the entire fund less the present value of the annuities charged upon such fund. *In re Maresi*, 74 N. Y. App. Div. 76, 77 N. Y. Suppl. 76.

The testator, a resident of Louisiana, died in 1902, leaving certain property in the state of New York. The will gave an annuity to two sisters and contained the request that the executors should arrange for these annuities "through such life insurance companies as the Mutual, New York Life, or Equitable Life, all of New York." The executors purchased annuities from New York companies with the New York assets of the testator. The court holds that as the will contained a direction to purchase annuities from one of the insurance companies mentioned in the will, the amount that was actually expended by the executors for the purchase of these annuities should be deducted and not the estimated value of the annuities as determined by the superintendent of insurance, and therefore, the tax on the residuary bequest should be based on the amount actually received and not to include property which has been paid out by the executor for the benefit of others in pursuance of directions contained in the will. *In re Hutchison*, 105 N. Y. App. Div. 487, 94 N. Y. Suppl. 354.

<sup>1</sup> *Howe v. Howe*, 179 Mass 546, 554, 61 N. E. 225, 55 L. R. A. 626.

[As to annuities, see further, *ante*, ss. 230, 306.]

### Sec. 343. Life Estates.

Life estates must be reckoned at their value at the death of the testator,<sup>1</sup> and are not dependent on the actual length of life of the life tenant.<sup>2</sup> This must usually be done by annuity tables. The value of a life estate may be determined by actuaries' experience tables,<sup>3</sup> or like annuities.<sup>4</sup>

<sup>1</sup> *Ayers v. Chicago Title & Trust Co.*, 187 Ill. 42, 58 N. E. 318. *Dow v. Abbott* 197 Mass. 283, 84 N. E. 96.

<sup>2</sup> *Howe v. Howe*, 179 Mass. 546, 550, 61 N. E. 225, 55 L. R. A. 626.

<sup>3</sup> *In re Wolf*, 48 Ohio Wkly. L. Bul. 211.

<sup>4</sup> Life estates for the purposes of the tax are to be appraised at their cash value in the same manner as annuities. This means such a sum that if invested and put at interest it will with a proportionate part taken from the fund yearly to make up the annuity, yield the required amount of it annually, the whole fund being exhausted during the expectancy of life of the annuitant. Citing with approval the *Case of Handley*, 3 L. L. N. 9. *In re Von Storch*, 7 Pa. Dist. R. 204.

[What life estates taxable, see *ante*, 228.]



### Sec. 344. Statute Providing no Method for Ascertaining Value of Life Estate.

The fact that the statute does not provide any method for ascertaining the value of the life estate is not material; for the court may in the absence of express direction adopt some practical way for ascertaining its value — for example, by referring to life and annuity tables.<sup>1</sup> Valuation of a life estate under the New York statute of 1885 should be made according to the rules of the supreme court where no tables are specified in the statute.<sup>2</sup>

<sup>1</sup> *State v. Probate Court*, 100 Minn. 192, 197, 110 N. W. 865.

<sup>2</sup> *In re Robertson*, 5 Dem. Surr. (N. Y.) 92.

### Sec. 345. Death of Life Tenant before Appraisal.

The fact that the life tenant may have died after the testator, though before the appraisal, will not affect the tax upon his interest.

*In re Jones*, 28 Misc. Rep. 356, 59 N. Y. Suppl. 983. *Contra, Kahn v. Herold* 147 Fed. 575, affirmed in 86 C. C. A. 598, 159 Fed. 608, 163 Fed. 947. (Under U. S. St. 1898.) See *In re Hall*, 36 Misc. 618, 73 N. Y. Suppl. 1124, where annuitant lived longer than estimated the remainderman should be charged only with what he actually got. *Cf.* cases cited, *ante*, s. 342, n. 1.

### Sec. 346. Remainders.

Remainders should be valued by deducting from the whole estate the value of the primary estate,<sup>1</sup> except where payment is postponed till the remainder comes into possession, when the remainder interest may be chargeable with the whole tax on the whole estate<sup>2</sup> at the time the remainderman goes into possession.<sup>3</sup>

<sup>1</sup> *Howe v. Howe*, 179 Mass. 546, 551, 55 L. R. A. 626. *Dow v. Abbott*, 197 Mass. 283, 288, 84 N. E. 96. *In re Lange*, 25 Misc. Rep. 466, 55 N. Y. Suppl. 750. *Appeal of Commonwealth*, 127 Pa. St. 435, 439, 17 A. 1094 (if remaindermen elect to pay in anticipation on the death of the decedent).

Under Ill. St. (Hurd's Sts. 1903, p. 1576) the only provision for deduction of the primary estate in assessing the value of the remainder interest is in s. 2 and that where the remainder goes to the collateral heirs, to a stranger to the blood, or to a body politic or corporate, in which case the value of the preceding estate is first to be deducted and the tax extended on the remainder only. *In re Kingman*, 220 Ill. 563, 77 N. E. 135.

The testator gave property in trust to pay the income to his wife for life. If the income was insufficient to realize \$5,500 a year they are directed to use the principal to make up that amount. The widow died in 1900 and the appraiser, on her death, appraised her interest according to the annuity tables as of the death of the testator. The widow actually survived longer than the annuity tables reckoned and the court holds that the valuation of the estate in remainder

should be made as of the death of the life tenant, as it would be unthinkable that the remainderman might receive nothing whatever and still be assessed with a tax. *In re Hall*, 36 Misc. Rep. 618, 73 N. Y. Suppl. 1124.

<sup>2</sup> *Appeal of Commonwealth*, 127 Pa. St. 435, 439, 17 A. 1094. *Cooper v. Commonwealth*, 5 Pa. Co. Ct. 271.

<sup>3</sup> *In re Connolly*, 38 Misc. 533, 77 N. Y. Suppl. 1113. *In re Goelet*, 78 N. Y. Suppl. 47.

[See further, *ante*, ss. 231-4.]

### Sec. 347. Remainder after Remarriage.

To appraise an interest after the death or remarriage of the widow, mortuary tables should not be used. While the probability of death may be estimated from these tables, there are no statistics available from which the probability of remarriage may even be conjectured.<sup>1</sup> Where a life estate is determinable upon the remarriage of the life tenant, on the remarriage of the life tenant the appraiser should deduct from the principal fund the value of the estate of the widow during the term of her widowhood.<sup>2</sup>

<sup>1</sup> *Herold v. Shanley*, 146 Fed. 20, 76 C. C. A. 478, affirming 141 Fed. 423 (N.J.).

<sup>2</sup> *In re Sloane*, 154 N. Y. 109, 114, 47 N. E. 978, 19 N. Y. App. Div. 411, 46 N. Y. Suppl. 264. As of what date interests on remarriage should be appraised see *ante*, s. 335, n. 2.

### Sec. 348. Power to Order Production of Papers.

The court may have by law authority to compel the parties to furnish information to the appraisers,<sup>1</sup> but not to force the corporations in which he was a stockholder to do so.<sup>2</sup>

<sup>1</sup> *In re Maris*, 14 Pa. Co. Ct. 171, 3 Pa. Dist. 83.

<sup>2</sup> Wis. St. 1903, c. 44, ss. 12 and 15, does not give to the county court the authority to order the corporation in which the decedent was a stockholder to produce its private books, papers and documents for inspection to enable the court to determine the value of the estate of the decedent and the amount of the tax to which the same is liable. The court finds that such supposed entries and statements made in the books, papers and documents of the corporation by its officers or agents have no more probative force as evidence in court, in the controversy between the executors and the state of Wisconsin, than oral declarations to the same effect, made by the same officers and agents would have had. Such entries and statements were obviously mere hearsay, made by third parties without the sanction of an oath. There is nothing in the statute authorizing the county court, whether acting as a judicial tribunal or as an appraiser, to compel a third party to produce his private books, papers and documents; and certainly the county court has no such power in the absence of statutory authority. A writ of prohibition against the proceedings in the county court was granted. *State v. Carpenter*, 129 Wis. 180, 108 N. W. 641, 8 L. R. A. N. S. 788.

**Sec. 349. Appeal.<sup>1</sup>**

Appraisal is usually subject to appeal by any party,<sup>2</sup> including the state itself,<sup>3</sup> even though the law may also provide a remedy by reappraisal.<sup>4</sup> A right of appeal necessarily implies notice of the appraisal at some time.<sup>5</sup>

<sup>1</sup> See further, proceedings to vacate appraisal, *post*, s. 393. As to appeal from assessment, see *post* s. 392.

<sup>2</sup> *Comm. v. Freedley*, 21 Pa. St. (9 Harris) 33.

A failure to appraise can be corrected only by appeal and not by a proceeding to set aside the appraisal. *In re Smith*, 14 Misc. 169, 35 N. Y. Suppl. 701.

<sup>3</sup> *Becker v. Nye*, 8 Cal. App. Cal. 129, 96 P. 333.

<sup>4</sup> *Morgan v. Warner*, 162 N. Y. 612, 57 N. E. 1118, affirming 45 N. Y. App. Div. 428 (remedy by reappraisal in case of fraud is not exclusive but comptroller may appeal).

<sup>5</sup> *In re Belcher*, 211 Pa. St. 615, 619, 61 A. 252.

**Sec. 350. Appraisal has no Effect on Liability.**

An appraisal has for its object simply to ascertain the value of the estate and not to determine whether the estate is subject to the tax. Where the estate is not subject to be assessed with the tax the entire proceeding is a nullity. Therefore the appraisal, although not appealed from, is not final on the question of the liability to tax.

*Stinger v. Commonwealth*, 26 Pa. St. (2 Casey) 422, 426.

## CHAPTER XLI.

### DEBTS AND EXPENSES.

- § 351. Debts of Decedent.
- § 352. Partnership Debts.
- § 353. Debts Secured by Real Estate.
- § 354. Marshaling Assets to Pay Debts.
- § 355. Taxes on Real Estate.
- § 356. Tax Paid Improperly.
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- § 359. Executor's Commissions Increased by Increase in Value of Estate.
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- § 361. Practice where Expenses of Settlement Unknown.
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- § 363. Expenses of Executors in Defending Will.
- § 364. Expenses of Heirs Setting Aside Will.
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- § 371. Federal Inheritance Tax.
- § 372. Foreign Inheritance Taxes.
- § 373. Funeral Expenses.
- § 374. Cemetery Lot and Tomb.
- § 375. Care of Cemetery Lots.
- § 376. Masses.

#### Sec 351. Debts of Decedent.

The appraisal for purposes of the tax should consider the debts of the decedent,<sup>1</sup> and claims in litigation should be considered.<sup>2</sup>

<sup>1</sup> *Succession of Levy*, 115 La. 378, 39 S. 37, affirmed *Cohen v. Brewster*, 203 U. S. 552, 27 S. Ct. 174, 51 L. Ed. 310. *In re Westurn*, 152 N. Y. 93, 100, 46 N. E. 315, reversing 8 N. Y. App. Div. 59 (under the act of 1892). *In re Wormser*, 36 Misc. Rep. 434, 73 N. Y. Suppl. 748. *Appeal of Orcutt*, 97 Pa. St. 179. *In re Line*, 155 Pa. St. 378, 391, 26 A. 728, 32 Wkly. Notes Cas. 376. *Shelton v. Campbell*, 109 Tenn. 690, 72 S. W. 112. *Contra, In re Ludlow*, 4 Misc. Rep. 594, 25 N. Y. Suppl. 989 (under the act of 1892). *In re Millward*, 6 Misc. Rep. 425, 27 N. Y. Suppl. 286. See *Becker v. Nye*, 8 Cal. App. Cal. 129, 96 P. 333, *quære*.

The surrogate may deduct from the value of the estate the amount of debts owing by the decedent. *In re Millward*, 6 Misc. Rep. 425, 27 N. Y. Suppl. 286.

**Real Estate.** Where the land of the decedent passes to lineal descendants for life and at their death to collateral heirs, although the real estate descends intact to the collateral heirs, the tax must be assessed upon the valuation of the real estate after deducting the debts owing by the decedent at the time of his death. *Appeal of Commonwealth*, 127 Pa. St. 435, 440, 17 A. 1004.

**Community Property.** Where the deceased bequeathed to her husband all her property which consisted entirely of her share of the community property, the debts of the succession should be deducted in fixing the amount of the tax on inheritances. *Succession of May*, 120 La. 692, 45 S. 551.

**Disbursements which it is admitted were made** by the executor for debts must be allowed by the appraiser and it is error for him to reduce these amounts arbitrarily. *In re Dimon*, 82 N. Y. App. Div. 107, 81 N. Y. Suppl. 428.

<sup>2</sup> A claim in litigation should be referred to the appraiser to take evidence and report what if any rebate or deduction from the tax imposed should be made because of the claim. *In re Morgan*, 36 Misc. 753, 74 N. Y. Suppl. 478.

It was proper to withhold half the sum claimed by a claimant against the estate from appraisal and taxation. But it is better practice that the order determining the tax should contain an appropriate recital to the effect that the determination of the taxability of the sum claimed is suspended until the disposition of litigation. *In re Wormser*, 28 Misc. 608, 59 N. Y. Suppl. 1088.

### Sec. 352. Partnership Debts.

Partnership debts discharged with firm assets are not deducted from the assets of the decedent for the purposes of the tax.

*Memphis Trust Co. v. Speed*, 114 Tenn. 677, 88 S. W. 321.

### Sec. 353. Debts Secured by Real Estate.

Where real estate is subject to mortgage, only the equity of redemption above the mortgage should be appraised,<sup>1</sup> even though the tax is laid on real estate of a non-resident and it is claimed that the doctrine of equitable conversion and exoneration should be applied to relieve the land from the encumbrance of the mortgage, and that the executors should bring the proceeds of the personal estate from the domicile and apply it to payment of the debt so as to leave the land free from encumbrance.<sup>2</sup> So in appraising the residuary personal property the principal of a bond not due, signed by the decedent and secured by a mortgage upon his real estate, should not be deducted before estimating the taxable value of the bequests.<sup>3</sup> The opposite rule seems to prevail in Michigan and Pennsylvania.<sup>4</sup>

<sup>1</sup> *In re Sutton*, 3 N. Y. App. Div. 208, 212, 149 N. Y. 618. *In re Skinner*, 106 N. Y. App. Div. 217, 94 N. Y. Suppl. 144. See, also, *In re Strong*, 17 N. J. Law. J. 234.

<sup>1</sup> The court holds that the answer to this contention is that the rights and obligations of all parties are to be determined as of the time of the death of the decedent. Furthermore, the law of equitable conversion ought not to be invoked merely to subject to property taxation, especially when the question is one of jurisdiction between different states. *McCurdy v. McCurdy*, 197 Mass. 248, 83 N. E. 881.

<sup>2</sup> *In re Maresi*, 74 N. Y. App. Div. 76, 77 N. Y. Suppl. 76.

<sup>3</sup> The court points out the distinction which exists between New York and Michigan as to the law for the distribution of estates. It finds that it is the law in Michigan that the net personal estate for distribution consists of the personal property after the payment of debts and expenses, including the debts secured by mortgage on real estate, while by the New York statute the heir or devisee taking real estate is bound to satisfy and discharge any mortgage upon it out of his own property. Hence in Michigan a debt secured by mortgage on real estate should be deducted from the valuation of the personal property. *In re Fox*, 159 Mich. 420, 124 N. W. 60, 16 Detroit Leg. N. 943 (McAlvay, J., dissenting), reversing 154 Mich. 5, 117 N. W. 558, 15 Detroit Leg. N. 675.

Mich. St. 1903, c. 195, s. 17, prescribes the form of the order to be followed by the probate judge, which indicates that debts secured by mortgage are to be deducted from real property. This form was evidently copied from the New York Statute but can hardly be held in and of itself to establish a rule for fixing the amount of the inheritance tax where land of the testator is subject to mortgage. That is done by other provisions of the statute which render the form inserted inapplicable. *In re Fox*, 159 Mich. 420, 124 N. W. 60, 16 Detroit Leg. N. 943. See *Handley's Estate*, 181 Pa. St. 339.

### Sec. 354. Marshaling Assets to Pay Debts.

In appraising the local assets of a non-resident decedent a percentage of the total indebtedness apportioned to the value of the local assets as compared with the total assets should be deducted. Where nine per cent of the total personal estate of a non-resident was in the state of New York, it is proper for the New York surrogate's court to deduct nine per cent of the debts and expenses of the estate and the balance is the net assets within the state of New York.<sup>1</sup> So the deduction to be made for debts owing to non-resident creditors, mortuary expenses, commissions on property without the state, and other administration expenses in respect to such property, should be in proportion which the net New York estate, after all deductions are made for debts owing to resident creditors, New York commissions and New York administration expenses, bears to the entire or gross estate wherever situated.<sup>2</sup> The property of a non-resident located within the state is not subject to taxation when it appears that his indebtedness to creditors who are residents of the state is in excess of the value of the testator's property within the state. The fact that to release the debts

the executor brought money of the decedent from out of the state and paid the debts so that the securities in the state could be transmitted to be administered at the residence of the decedent, cannot make any difference as to what actually was transferred upon which the tax was imposed.<sup>3</sup>

Where the estate of the testator consisted of real and personal property in Illinois and real estate outside the state and a large indebtedness, the lower court held erroneously that in order to ascertain the amount on which to compute the tax the value of the personal property should be deducted from the total indebtedness of the estate and the remaining indebtedness should be apportioned upon all the real estate both foreign and domestic, and that the tax should be laid upon the amount so apportioned on the value of the lands in Illinois. This resulted by indirection in laying a tax on the foreign lands and was erroneous.<sup>4</sup>

<sup>1</sup> *In re Ramsdill*, 190 N. Y. 492, 493, 83 N. E. 584, reversing 119 N. Y. App. Div. 890. (The New York act of 1911 forbids marshaling assets.)

<sup>2</sup> *In re Porter*, 67 Misc. 19, 124 N. Y. Suppl. 676.

<sup>3</sup> *In re Grosvenor*, 124 N. Y. App. Div. 331, 108 N. Y. Suppl. 928.

<sup>4</sup> *Connell v. Crosby*, 210 Ill. 380, 392, 71 N. E. 350.

See further, *ante*, s. 204.

### Sec. 355. Taxes on Real Estate.

Taxes on real estate which are a lien and payable at the time of the decedent's death should be deducted from the value of the estate in order to ascertain its net value, in proceedings under the inheritance tax.<sup>1</sup> Where the testator died January 30, 1900, the annual taxes for the year 1900 not assessed nor a lien, nor payable at that time, under the New York statute should not be deducted before the levying of the inheritance tax.<sup>2</sup>

<sup>1</sup> *In re Liss*, 39 Misc. Rep. 123, 78 N. Y. Suppl. 969.

<sup>2</sup> *In re Maresi*, 74 N. Y. App. Div. 76, 77 N. Y. Suppl. 76.

Where the testator died January 27, only a few days after certain real estate he conveyed was assessed for the purpose of taxation, and upwards of two months before the day when such assessment might have been reduced or corrected under the charter of the city of New York, the court holds that at the time of the testator's death there was no existing debt, as the tax had not then been ascertained. All that had been done up to that time was fixing the valuation, which, unless corrected in the manner pointed out in the statute, constituted the basis upon which the tax was thereafter to be assessed. It was not until after April 1st following that the books for collection of taxes were closed. *In re Freund*, 143 N. Y. App. Div. 335, 128 N. Y. Suppl. 48, 95 N. E. 1129.

Where the testator died December 9, 1895, the tax levied and becoming a lien on December 13, 1895, should be deducted from the valuation of the estate

for the purposes of the inheritance tax, as the assessment had been made before that time and was binding upon him although the precise amount of the tax had not been ascertained until the warrants were delivered to the collectors. *In re Brundage*, 31 N. Y. App. Div. 348, 52 N. Y. Suppl. 362. See also *In re Hoffman*, 42 Misc. Rep. 90, 85 N. Y. Suppl. 1082.

### Sec. 356. Tax Paid Improperly.

Where the executrix has paid a tax to the federal government which it now seems was not a proper charge against the estate, this should not be surcharged against the executrix where it is admitted that the sum may be recovered back.

*In re Marx*, 117 N. Y. App. Div. 890, 103 N. Y. Suppl. 446, reversing 49 Misc. 280, 99 N. Y. Suppl. 334.

### Sec. 357. Stranger Paying Taxes on Land.

Where a stranger paid taxes on land, these payments should not be deducted from the valuation of the property transferred, as these taxes were paid by that person not a party to the title and any payments made by him are rather in the character of a loan than of a payment which entitles him to a lien on the land.

*In re Wood*, 123 N. Y. Suppl. 574.

### Sec. 358. Expenses of Administration.

The expenses of administration should be deducted,<sup>1</sup> including executor's commissions,<sup>2</sup> but not a bequest in addition to commissions.<sup>3</sup>

<sup>1</sup> *Callahan v. Woodbridge*, 171 Mass. 595, 599, 51 N. E. 176. *State v. Probate Court*, 101 Minn. 485, 487, 112 N. W. 878. *In re Wormser*, 36 Misc. 434, 73 N. Y. Suppl. 748. *In re Line*, 155 Pa. St. 378, 391, 26 A. 728, 32 Wkly. Notes Cas. 376.

**Expense of Audit.** Where the appraisal is made by an auditor the collateral heirs are properly chargeable with the expense of the audit resorted to as a substitute for the appraisement directed by law, and which they should have insisted on. *In re Burkhart*, 25 Pa. Super. Ct. 514.

Where the parties assent to the correctness of the estimate of expenses the register has no discretion but to allow it unless there is ground for a suspicion of fraud. *In re Cullen*, 8 Pa. Co. St. 234.

<sup>2</sup> **Commissions of Foreign Executor.** In appraising the New York property of a resident of Pennsylvania, the appraiser should not deduct commissions to executors which would be excessive under New York law in the absence of evidence of the Pennsylvania law on this subject. *In re Kennedy*, 20 Misc. Rep. 531, 46 N. Y. Suppl. 906, 2 Gibbons 220.



\* A bequest in addition to commissions to an executor is not within the intention of section 3 of the statute of 1887, which provides for a case where a bequest is made in lieu of commissions. *In re Underhill*, 20 N. Y. Suppl. 134, 2 Con. Surr. 262.

### **Sec. 359. Executor's Commissions Increased by Increase in Value of Estate.**

Where the estate in the hands of the executor increases in value so that the executor's commissions are increased, the increased commissions should be deducted from the inheritance tax, although the tax itself can be estimated only on the value of the property at the death of the testator.

*In re Van Pelt*, 63 Misc. 616, 118 N. Y. Suppl. 655.

### **Sec. 360. Where Will Forbids Commissions to Executors or Trustees.**

Where a will provided that no compensation or commission as such should be paid to any living executor or trustee for any services as executor or trustee, it was obvious that the testator intended that his estate should not be diminished by these ordinary expenses of administration, and it is clearly obvious that the legacies given to the executors were not given in lieu of commissions. The court therefore finds nothing to authorize the deduction from the total assessed value of the fees and commissions of executors and trustees.

*In re Vanderbilt*, 68 N. Y. App. Div. 27, 74 N. Y. Suppl. 450.

### **Sec. 361. Practice where Expenses of Settlement Unknown.**

The expenses of settling an estate may often be estimated for the purposes of the tax.

The court approves of the practice of estimating the unpaid debts and expenses of administration in so far as the estate has not been administered at the time of the appraisal, provided the report and order of the appraisers reserve the right of those whose interests are assessed to a rebate in case it shall appear that the debts or expenses have been estimated too low and the provision for a further assessment, though perhaps this is not strictly necessary, if they are estimated too high. *In re Dimon*, 82 N. Y. App. Div. 107, 81 N. Y. Suppl. 428.

Where the executor was doubtful whether seven thousand dollars would cover the expense of final settlement of an estate, the court ordered the amount of seven thousand dollars be retained by the executor for contingent expenses which may be incurred in the final settlement and that interest at six per cent be computed on five per cent of the balance from one year after the death of the testator until the date of the decree. *In re Miller*, 182 Pa. St. 157, 162, 37 A. 1000. See *Shelton v. Campbell*, 109 Tenn. 690, 72 S. W. 112.

**Sec. 362. Embezzlement by Executor.**

Where the executor misappropriates the funds of the estate the ensuing loss is not to be deducted in reckoning the value of the estate for the purpose of the inheritance tax. All charges at the death of the testator should be deducted, but the misappropriation by the executor happened after the death of the testator and should therefore not be deducted, as subsequent increase or decrease in the value of the estate is immaterial.

*In re Hite*, 159 Cal. 392, 113 Pac. 1072.

**Sec. 363. Expenses of Executors in Defending Will.**

Lawful expenditures and expenses made by the executors in defending a will against the heirs at law should be deducted in determining the amount on which to compute the inheritance tax.

*Connell v. Crosby*, 210 Ill. 380, 71 N. E. 350, distinguishing *In re Lines*, 155 Pa. St. 378, 26 A. 728, where the expenses of legatees assisting the trustees was not deducted, and *In re Westurn*, 152 N. Y. 93, 46 N. E. 315, where the expenses of heirs who had successfully contested the will were not allowed. *In re Gihon*, 169 N. Y. 443, 612 N. E. 561, modifying 64 N. Y. App. Div. 504, 72 N. Y. Suppl. 1104 (expenses of temporary administrator in will contest).

Where the will is contested the expenses for attorney's fees incurred by the executor must be treated as expenses of administration. It is the duty of the executor and clerk of the county court to make an estimate of such fees and expenses and to tentatively allow for them, and thus approximate the amount of the tax to be paid, and this amount should be paid subject to revision upon final statement and settlement of account under section 11 of the act. Provision is made for a refund where the executor may have paid too much tax. *Shelton v. Campbell*, 109 Tenn. 690, 72 S. W. 112.

**Sec. 364. Heirs Contesting Will.**

The expenses of heirs in successfully contesting the probate of a will are not to be allowed as expenses, as they are not claims existing against the decedent or his property.

*In re Westurn*, 152 N. Y. 93, 102, 46 N. E. 315, reversing 8 N. Y. App. Div. 59.

**Sec. 365. Action to Construe Will.**

The costs and expenses of an action to construe a will should be deducted before the levying of the inheritance tax. This is a proper administrative expenditure of funds.

*In re Maresi*, 74 N. Y. App. Div. 76, 77 N. Y. Suppl. 76, citing *In re Gihon*, 169 N. Y. 443, 62 N. E. 561.

[Will construed on appraisal, see *ante*, s. 332.]

**Sec. 366. Expense of Resisting Adverse Claim.**

The expenses of resisting a claim under an alleged contract under which claimant alleged that he was entitled to the whole estate by the decedent should be deducted from the value of the estate for the purposes of the inheritance tax.

*In re Sanford*, 66 Misc. 395, 123 N. Y. Suppl. 284.

**Sec. 367. Controversy among Distributees.**

The expenses of a controversy among the distributees as to the proper distribution of an estate does not diminish the fund for inheritance taxation.

*In re Sanford*, 66 Misc. 395, 123 N. Y. Suppl. 284. *In re Line*, 155 Pa. St. 378, 391, 26 A. 728, 32 Wkly. Notes Cas. 376.

**Sec. 368. Broker's Commissions.**

The commissions of a broker on sale of real estate should be paid as a necessary expense of administration.

*In re Rothschild*, 63 Misc. 615, 118 N. Y. Suppl. 654.

**Sec. 369. Trustee's Commissions.**

A will provided compensation for the trustee of five thousand dollars a year for ten years, or fifty thousand dollars; and the court holds that the compensation of the trustee, earned not in the administration of the estate but in the management thereof, for the benefit of the legatees or devisees, does not come properly within the class or reason for exempting the administration expenses. Such services have no reference to closing the estate for the purpose of distribution to those entitled to it and are not required or essential to the rights of the heirs or legatees. These trusts, however, created for the benefit of those to whom the property ultimately passes, are of voluntary creation and are intended for the preservation of the estate.<sup>1</sup> Under the New York act of 1896, the commissions allowed by law to trustees for life tenants should be deducted from the valuation of the interest of the life tenants.<sup>2</sup> Under the same statute the executors' commissions as trustees should be deducted in assessing the transfer tax.<sup>3</sup>

<sup>1</sup> *State v. Probate Court*, 101 Minn. 485, 487, 112 N. W. 878. The court relies somewhat on *In re Gihon*, 169 N. Y. 443, 62 N. E. 561, and *Silliman's Case*, 79 N. Y. App. Div. 98, 80 N. Y. Suppl. 336.

<sup>1</sup> *In re Gihon*, 169 N. Y. 443, 446, 612 N. E. 561, modifying 64 N. Y. App. Div. 504, 72 N. Y. Suppl. 1104.

<sup>2</sup> *In re Silliman*, 175 N. Y. 513, 67 N. E. 1090, affirming 79 N. Y. App. Div. 98, 80 N. Y. Suppl. 336, reversing 77 N. Y. Suppl. 267.

The estimated commissions of trustees to whom a fund is turned over by the executor should not be deducted from the estate in estimating the value for purposes of the inheritance tax. The commissions of trustees form no part of the regular administration of the estate, but is an expense to be borne by the trust and its beneficiaries and cannot be deducted to reduce the tax due to the state. *In re Becker*, 26 Misc. Rep. 633, 57 N. Y. Suppl. 940. *In re Silliman*, 79 N. Y. App. Div. 98, 80 N. Y. Suppl. 336, reversing 77 N. Y. Suppl. 267, affirmed 175 N. Y. 513, 67 N. E. 1090.

### Sec. 370. Subrogation of Creditors.

Where the administrator has paid from the personal estate the transfer tax, a claim against those to whom the property descended in equity must be subrogated to that claim for the benefit of the creditors where they had the right to the application of such personal property to the payment of their debts.

*Hughes v. Golden*, 44 Misc. 128, 89 N. Y. Suppl. 765.

### Sec. 371. Federal Inheritance Tax.

The federal tax cannot be deducted before appraisal for the state tax in New York.<sup>1</sup> The court reasons that it is not true that the federal taxes are payable primarily out of the estate; and the court finds that the federal tax is of exactly the same nature as the state tax and is a tax not on property but on succession. The federal tax is on the legacy and not on account of the estate. The fact that this may result in great hardship does not alter the rule but results from the rate of taxation prescribed by the federal statutes.<sup>2</sup>

In Massachusetts the federal tax was to be deducted under the act of 1891, although that act contains no express exception. The court proceeds on the theory that the words of the act most naturally signify the property which the legatee actually would get were it not for the state tax imposed, and that as a matter of justice he should not be taxed for more.<sup>3</sup> The Massachusetts rule would seem to be the fairer and the New York rule the more accurate.

<sup>1</sup> *In re Irish*, 28 Misc. Rep. 647, 60 N. Y. Suppl. 30. *In re Curtis*, 31 Misc. Rep. 83, 64 N. Y. Suppl. 574. *Contra*, *In re Vanderbilt*, 68 N. Y. App. Div. 27, 74 N. Y. Suppl. 450.

The United States transfer tax should not be deducted from an estate before the assessment of the state tax upon it. The percentage fixed by the state for

its own use cannot be diminished even by the law of the United States. The title and possession of property when transmitted upon the death of the owner are by consent of the state, not the United States. Therefore, the percentage fixed for its own use cannot be diminished by even subtracting the tax fixed by the United States for war revenue. *In re Becker*, 26 Misc. Rep. 633, 57 N. Y. Suppl. 940.

<sup>1</sup> *In re Gihon*, 169 N. Y. 443, 62 N. E. 561, modifying 64 N. Y. App. Div. 504, 72 N. Y. Suppl. 1104, overruling 68 N. Y. Suppl. 381, 33 Misc. 206.

<sup>2</sup> *Hooper v. Shaw*, 176 Mass. 190, 57 N. E. 361.

### **Sec. 372. Foreign Inheritance Taxes.**

The question whether foreign legacy taxes paid are to be deducted from the legacy or whether they are an expense of administration which should be paid out of the estate, leaving the legacy payable in full, is a question of intention. Where a testator makes no provision for the payment of such taxes from his estate, he must have intended the actual benefit to be received by the subject of his bounty to be as much less than a sum named in his will as he is presumed to have known the state would take for itself in transmitting property. In a gift of specific personal property located in a foreign state the amount demanded by such state as the price of transfer of title would naturally be a charge against the subject of the legacy, not because of the testator's presumed familiarity with the law of the jurisdiction, but because under that law he has not the power to transfer by will the entire title.

In a gift of a pecuniary legacy of a certain amount, the apparent intention is to benefit the legatee to the full amount named. If such will is to be administered by the law of the jurisdiction imposing no inheritance tax, or none upon the class to which the legatee belongs, the purpose to transmit the full amount to such legatee would seem secure. The conclusion that a less sum was intended, because at the time of the testator's death some portion of his property happened to be within the jurisdiction authorizing a tax upon such a transfer, seems strained and illogical. To hold that the effect of the foreign law is to reduce the legacy given by the will construed in accordance with the law of the testator's domicile is to permit the foreign law to regulate the testamentary capacity of a resident; as the foreign tax depends upon the jurisdiction over the property and is not sustainable as a regulation of the exercise of testamentary power by the citizen of another state, it follows that the tax is merely a charge upon the particular property and not upon the pecuniary legacies given by the will.

*Kingsbury v. Baseley*, 75 N. H. 13, 70 A. 916.

The decedent was a resident of Pennsylvania owning stock in New York corporations. The property in New York was in proportion to the entire estate as two to five and the appraiser deducted that proportion of the total debts, funeral and administrations expenses, from the taxable estate in this state; but he refused to deduct this proportionate sum from the amount of the legacy tax paid upon the entire estate in Pennsylvania. The court holds that the fact that the Pennsylvania tax has been paid cannot be considered in assessing the New York tax. *In re Kennedy*, 20 Misc. Rep. 531, 46 N. Y. Suppl. 906, 2 Gibbons 220. See *In re Swift*, 137 N. Y. 77, 32 N. E. 1096, and *Hooper v. Shaw*, 176 Mass. 190, 57 N. E. 361, considering analogous questions.

**The New Hampshire Rule.** "No ground can be found, in the absence of a direction, either express or implied in the will, for a *pro rata* distribution among all the pecuniary legacies of the sums paid as foreign death duties. On account of some legacies a charge may be made in some states and not in others. A deduction from a legacy on account of a tax imposed on others in a particular jurisdiction would not be supported by any basis of reason. The only method which could be followed would be the division of the legacies into as many classes as were made by the laws of all the states in which property was found, and a division of the sums paid *pro rata* among each class. This would plainly be an administration of the estate according to laws which have no force here, and which cannot, in the absence of legislative authority for such course, properly be followed. The executors have in hand, if they are ready to settle, so much property. The will, construed by the law of this state, directs how the distribution shall be made. The fact that the executors have less than they would have had, except for the demands of jurisdictions to which they were obliged to go to get the property and bring it here for distribution, cannot alter the law of the state or the terms of the will. In the absence of evidence from which a contrary direction can be implied from the will, the amount deducted by other states before permitting the transfer of property within their limits to the executor for distribution here is not property within this state for distribution. The executors are chargeable only for what has come to their hands — the property less the duties paid. If they charge themselves with the full value of the property, a practical method of accounting would permit them to discharge themselves by accounting for the foreign duties paid as expenses of administration.

"In the present case there are no facts showing an intention to charge the pecuniary legacies with foreign duties for the benefit of the residuary legatees. There is a class of cases, where the residuary bequest, by reason of the special circumstances of the case, has been construed as a particular legacy, not liable to fail, except ratably with the other legacies, on account of any unexpected deficiency of the estate, or to be augmented by the unforeseen failure of the other legacies. 2 Red. Wills 447. *Dyose v. Dyose*, 1 P. Wms. 305. There is nothing in the present case tending to show that the residuary bequest was intended as anything except the ordinary disposal of a residuum which might be left, while the first part of the eighty-second clause establishes that the testatrix considered the possibility that the residuary legatees would receive nothing. In the latter part of the same clause the testatrix directs her executors to pay any and all inheritance and succession taxes that may become due upon any legacies given to individuals. This implies a recognition of the possibility of such taxes and,

as to legatees other than individuals, a purpose that the duties legally chargeable upon such legacies should be borne by them; but as the foreign duties are not due upon the legacies given by the will, but are a deduction from property which may be used in carrying out the purpose of the will, the language is insufficient to require the court to administer the law of all the states in which property may have been found and taxes paid." *Per* Parsons, C. J., in *Kingsbury v. Baseley*, 75 N. H. 13, 70 A. 916, 919.

See as to reciprocal provisions, *ante*, s. 194.

### Sec. 373. Funeral Expenses.

Funeral expenses are to be deducted from the appraisal as an expense of settling the estate.

*In re Wormser*, 36 Misc. 434, 73 N. Y. Suppl. 748.

Iowa Code, s. 1467a, provided that the term debts shall include a reasonable sum for funeral expenses. The purpose of this section is that an estate whose value is near the dividing line shall not be carried into the exempt class by extraordinary charges under the guise of funeral expenses or by presentation of stale or fictitious claims which are not allowed within fifteen months. *Morrow v. Durant*, 140 Iowa 437, 118 N. W. 781, 23 L. R. A. (N. S.) 474n.

### Sec. 374. Cemetery Lot and Tomb.

The Iowa statute allows as exempt a "reasonable" fund for the expense of a tomb.

Where the residuary legatees concede the propriety and reasonableness of the fund for erecting a tomb to the testator, the state in the absence of fraud or collusion cannot interfere nor has it a right to try the question of the reasonableness of the expense except for the purposes of determining the classification of an estate as exempt or non-exempt from taxation. The question whether the amount reserved by a will for the erection of a tomb is "reasonable" is a question of mixed law and fact on which it is very important that the will of the decedent expressly provided for this expenditure, and this provision of the will raises the presumption of reasonableness.

*Morrow v. Durant*, 140 Iowa 437, 118 N. W. 781 (where court from lack of evidence refused to consider whether a provision of \$2,000 for a tomb is reasonable).

The Iowa inheritance tax law, s. 1467, provides that the property subject to tax is that "which shall pass by will . . . to any person," and s. 1467b extended the previous section to apply to "property of every kind." The court, however, finds that this latter section does not render property reserved by the will for a tomb subject to tax. The court remarks that that interpretation would make the statute unconstitutional, as it is only upheld on the theory that it is not a tax upon the property itself but on the right to succession to property. *Morrow v. Durant*, 140 Iowa 437, 118 N. W. 781, 23 L. R. A. (N. S.) 474n.

## Sec. 375. Care of Cemetery Lots.

A legacy for care of the testator's cemetery lot is generally held exempt as a part of the funeral expenses.<sup>1</sup> A bequest of a sum in trust for keeping a burial lot in condition and repair is reasonably a part of the funeral expenses,<sup>2</sup> but not where it is for the care of lots for himself and relatives.<sup>3</sup> Legacies to a church<sup>4</sup> or to a cemetery association have been held not exempt as a part of the funeral expenses.<sup>5</sup>

<sup>1</sup> *In re Vinot*, 7 N. Y. Suppl. 517. *In re Liss*, 39 Misc. Rep. 123, 78 N. Y. Suppl. 969.

<sup>2</sup> *In re Maverick*, 135 N. Y. App. Div. 144, 119 N. Y. Suppl. 914.

The court distinguishes *In re Gould*, 156 N. Y. 423, 51 N. E. 287, *In re McAvoy*, 112 N. Y. App. Div. 377, 98 N. Y. Suppl. 437, as in the Gould case the testator had made a large bequest to his son as a reward for faithful services and in the McAvoy case the bequest was to pay for masses of others and the testator.

<sup>3</sup> A legacy in trust the interest of which is to be devoted to the care of two cemetery lots is subject to the inheritance tax. It was contended that this bequest was to be considered as in the nature of funeral expenses, but the manifest intention of the testator was to provide a fund the income of which should be devoted to caring for the last resting place of all her relatives, and that this involved caring for her grave was a mere incident of the general purpose. *In re Long*, 22 Pa. Super. Ct. 370.

<sup>4</sup> Where a will gave to the church two thousand dollars and in consideration of the bequest the testator desired that it shall keep in order in perpetuity his family burial lot, the legacy is subject to the payment of the collateral inheritance tax. This obligation does not exempt the legacy. The fact that the legacy is not a pure gratuity is not material. The court follows *In re Seibert*, 18 Wkly. Notes Cas. 276. *In re Walter*, 3 Pa. Co. Ct. 447.

<sup>5</sup> A bequest to a cemetery association of a thousand dollars, the interest to be used for perpetual care of the testator's lot, is not part of the funeral expenses. The court holds there is a distinction between expenditures for a burial lot made by an executor in his discretion and a bequest made by a decedent in his last will to a certain beneficiary and for a certain specific purpose; and as cemetery associations are not specifically mentioned as being exempt the transfer is subject to tax. *In re Fay*, 62 Misc. 154, 116 N. Y. Suppl. 423.

## Sec. 376. Masses.

A legacy for masses may be made directly to some religious organization, in which case it will be treated as a bequest for religious purposes,<sup>1</sup> or it may be treated as a personal bequest to the priest who is to say the masses.<sup>2</sup>

<sup>1</sup> *In re Eppig*, 62 Misc. 613, 118 N. Y. Suppl. 683.

The court holds that as the legacies are bequeathed directly to religious bodies, and as provision for masses is merely collateral and incidental, they are therefore exempt under section 221. *In re Didion*, 54 Misc. 201, 105 N. Y. Suppl. 924.



<sup>2</sup> *In re* Brinkman, 38 Ohio Wkly. L. Bul. 304.

The court finds the bequest to be valid. That the beneficiary has designated as a wish on the part of the testatrix to have a particular priest celebrate the masses is equivalent to a direction and that therefore the bequest is subject to the inheritance tax. *In re* Black, 24 N. Y. St. 341, 5 N. Y. Suppl. 452, 1 Con. Surr. 477.

The will bequeathed to a priest, or in the event of his death to his successors, the sum of \$800 to be used in saying eight hundred low masses, two hundred for each of four different persons. The court holds that this bequest is not specially exempted and is not a provision for funeral expenses, and that the low mass in no sense is a part of the funeral service even so far as such masses were said for the testator. *In re* McAvoy, 112 N. Y. App. Div. 377, 98 N. Y. Suppl. 437.

## CHAPTER XLII.

### ASSESSMENT OF TAX.

- § 377. Whether Assessment a Proper Function of Probate Court.
- § 378. Jurisdiction of Probate Courts Exclusive.
- § 379. Jurisdiction Affected by Right of Action by Beneficiary.
- § 380. In Equity on Distribution.
- § 381. Power to Fix Liabilities and Apportion Tax.
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- § 388. Jurisdiction of Probate Courts over Estates of Non-Resident Decedents.
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- § 390. Evidence.
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- § 392. Appeal.
- § 393. Power to Vacate Assessment.
- § 394. Proper Decree where Statute Misconstrued by Tax Officials.

[Notice of assessment, see *ante*, s. 71.]

#### Sec. 377. Whether Assessment a Proper Function of Probate Court.

The jurisdiction of the probate court to assess and collect the tax has been unsuccessfully attacked as extra-judicial or beyond the proper functions of a probate court.

*In re Wolfe* 137 N. Y. 205, 33 N. E. 156, reversing 2 Connolly 600.

The imposition and collection of this tax are simply incidents in the final settlement and adjustment of estates, and therefore properly within the jurisdiction of surrogate's courts. *In re McPherson*, 104 N. Y. 306, 324, 10 N. E. 685, 58 Am. Rep. 502.

The ascertainment of the amount of the inheritance tax is a judicial question and being a necessary proceeding in the administration of the estate of deceased persons may be properly committed to the probate court. *State v. Probate Court*, 112 Minn. 279, 128 N. W. 18, 21.

[What court should compute tax, see *ante*, s. 325.]

**Sec. 378. Jurisdiction of Probate Courts Exclusive.**

The special statutory authority to assess is commonly exclusive.

*In re Wolfe*, 137 N. Y. 205, 33 N. E. 156, reversing 2 Connolly 600.

The jurisdiction given to the surrogate to determine and assess the inheritance tax is exclusive and cannot be exercised by the supreme court on a petition to construe a will. *Weston v. Goodrich*, 86 Hun 194, 33 N. Y. Suppl. 382.

As to collection in equity on distribution, see, however, *Barret v. Continental Realty Co.*, 130 Ky. 109, 114 S. W. 750, more fully reported, *post* s. 380.

Action of court of domicil on distribution is binding on another court as to marshaling assets. *In re Clark*, 37 Wash. 671, 80 P. 267, reported more fully *ante*, s. 204, n. 8.

**Sec. 379. Jurisdiction Affected by Right of Action by Beneficiary.**

A statute giving the probate court jurisdiction of the settlement of inheritance taxes does not give it exclusive jurisdiction, but the legatee may sue the executor at law to recover his legacy.<sup>1</sup> The Michigan statute of 1903, providing that it is the duty of the executor to collect the inheritance tax and that he shall not deliver any property subject to tax to any person until the tax assessed has been paid to him or to the county treasurer, does not prevent the institution of an action in ejectment by the devisees. No delivery of possession of real estate to the devisees was necessary. Under the will they took title subject to the right of the executor to take possession for the purposes of administration. The rights of the state are of no concern to the descendants.<sup>2</sup>

<sup>1</sup> *Essex v. Brooks*, 164 Mass. 79, 41 N. E. 119.

<sup>2</sup> *Weller v. Wheelock*, 155 Mich. 698, 118 N. W. 609.

**Sec. 380. In Equity on Distribution.**

In a proceeding in equity to obtain distribution the court may require payment of the tax before distribution although the probate court is given special authority over matters of taxation.

Ky. St. 1906, c. 22, ss. 13, 14, 15, confer jurisdiction on the county court to determine questions arising in relation to the tax, but this jurisdiction is not exclusive when the jurisdiction of the court of equity is invoked to distribute an estate and the interest of each or any number of the heirs at law is subject to the inheritance or other tax. The court at the instance of the official representative of the commonwealth charged with the duty of collecting such tax may require its payment out of the share or shares of those chargeable with the tax before distributing the estate or funds among them, and thereby save both the tax collector and the heirs the trouble and expense of a separate and independent proceeding in the county court to compel the payment of the tax. The

circuit court, therefore, in requiring the payment of the tax before distribution did not exceed its jurisdiction. *Barret v. Continental Realty Co.*, 130 Ky. 109, 114 S. W. 750.

### Sec. 381. Power to Fix Liabilities and Apportion Tax.

The probate court may be empowered to determine what proportion of the tax shall be paid by each party interested,<sup>1</sup> which power may be implied in the probate courts by general authority over the tax.<sup>2</sup>

<sup>1</sup> *Connell v. Crosby*, 210 Ill. 380, 71 N. E. 350. *Tyson v. State*, 28 Md. 577.

<sup>2</sup> The question as to the liability to pay a tax is a question affecting a devise, legacy or inheritance under the act, for if the tax is paid the devise, legacy or inheritance will be diminished by the payment. *Callahan v. Woodbridge*, 171 Mass. 595, 51 N. E. 176.

A provision of the inheritance tax law giving the probate court jurisdiction to hear and determine all questions relative to the inheritance tax, gives it jurisdiction over a petition praying the court to determine whether such a tax is payable and to fix its amount. *Bradford v. Storey*, 189 Mass. 104, 75 N. E. 256.

"When we read all of the provisions of this act [of 1885], it is perfectly apparent that a special system of taxation was created for the benefit of the state, with all the necessary machinery for its working; the control with respect to which was vested in the surrogate's court, with a jurisdiction exclusive in its nature. In the assessment of a tax upon property passing by will, or by the intestate law, the responsibility is imposed by the law upon the surrogate. He acts for the state and he is commanded to assess and fix the tax to which the property is liable. To comply with the command in section 13 of the act, in that respect, he must, necessarily, determine the question of liability to taxation, inasmuch as if no such liability exists he is without jurisdiction in the matter. When the machinery of this system of taxation is set in motion, under section 13 of the act, whether upon the application of interested parties, or upon his own motion, the surrogate, by force of its provisions, is at once invested with the office and the functions of an assessor for the state, whose duty it is to assess for its use a tax, and in whom not only by virtue of the office, but by the further provisions of section 15, inheres the authority, and upon whom rests the obligation, to determine the question of whether the property of the decedent, which passes to others, is subject or liable to taxation by the state. He must decide whether the property is taxable, for that fact lies at the foundation of his jurisdiction and is of the essence of his right to proceed with the assessment. Not all the property of decedents may be subject to the tax imposed by the first section, and what property shall be assessed for taxation is left, by the thirteenth section, for the surrogate to determine. To quote again the language, he 'shall assess and fix the cash values of all the estates, etc., and the tax to which the same is liable,' and this direction to assess involves the necessity, as well as the power, to determine the question of liability, as much as it does in the case of assessors of taxes in the general scheme of taxation.

"I can see no difference between the principle upon which the surrogate acts in proceeding to assess property for taxation under the act, and that upon which,

in the general system of taxation in the state, tax assessors act in the assessment of persons or property for purposes of taxation. It is well settled, as to them, that in their proceedings they must determine the question of liability to taxation as a fact, which gives them jurisdiction to assess. It is not only an important, but it is a conditional step in the proceeding for the assessment." *Per Gray, J.*, in *In re Wolfe*, 137 N. Y. 205, 211, 33 N. E. 156, reversing 2 Connolly 600.

### **Sec. 382. When Assessment Postponed.**

Assessment may be properly postponed where litigation over the probate of a will renders it impossible to say whether the property will pass under the will, or as in case of intestacy,<sup>1</sup> or where it is impossible to tell the present value of the property,<sup>2</sup> or where the beneficial interests are unascertainable.<sup>3</sup> A failure to assess promptly is not in such cases an adjudication that no tax is due.<sup>4</sup>

<sup>1</sup> *In re Westurn*, 152 N. Y. 93, 99, 46 N. E. 315, reversing 8 N. Y. App. Div. 59.

<sup>2</sup> Where the executors have confederate money in their hands which has become valueless the tax upon this money cannot be determined until it is decided whether the executors will be allowed for this loss on settlement with legatees. If the legatees get good money the state must, of course, have a tax from it. *State v. Brevard*, 62 N. C. 141.

<sup>3</sup> *In re Irwin*, 36 Misc. 277, 73 N. Y. Suppl. 415.

The right of remaindermen to file a bond for the payment of the tax is not taken up where it did not appear that any request to file such a bond had been made in the lower court. *In re Kingman*, 220 Ill. 563, 77 N. E. 135. As to unascertainable interests, see further, ss. 234, 335, 347.

<sup>4</sup> *In re Irwin*, 36 Misc. Rep. 277, 73 N. Y. Suppl. 415.

### **Sec. 383. Taxes Due in the Future.**

The probate court in the absence of special provisions has no jurisdiction to provide for the future payment of taxes or to determine when or under what circumstances the rate of taxation would increase. The question before the court is what tax has accrued and the court should limit itself to that question.

*State v. Probate Court*, 112 Minn. 279, 128 N. W. 18, 21.

### **Sec. 384. In what Proceedings Assessment is Proper.**

Assessment of the inheritance tax should only be made in the special proceedings provided by law for that purpose.

*In re Farley*, 15 N. Y. St. Rep. 727 (not on motion by the executor). *In re Morris*, 138 N. C. 259, 50 S. E. 682 (not on appeal from an order that executors account).

### **Sec. 385. Order of Exemption.**

Power to fix or order exemptions may be implied by power to appraise and assess the tax.

*In re Collins*, 104 N. Y. App. Div. 184, 93 N. Y. Suppl. 342.

An administrator's petition for an order of exemption is insufficient to support such an order where it relates only to the personal property of the decedent and contains no proof that he did not die seized of real estate liable to taxation under the statute of 1903, chapter 41. Notice of the order should be given to the state comptroller under section 231, requiring notice of an appraisal. *In re Collins*, 104 N. Y. App. Div. 184, 93 N. Y. Suppl. 342.

In a Tennessee case the question of an exemption under the inheritance tax law came up by a suit by the county court clerk against the administrator for the purpose of recovering the tax in the circuit court. *English v. Crenshaw*, 120 Tenn. 531, 110 S. W. 210.

### **Sec. 386. Oral Statement by Court.**

Where on an affidavit of the executor as to the assets the surrogate expresses the opinion orally that the estate is not subject to tax, but enters no order or judgment, the state is not barred from subsequently asking for an appraisal.

*In re Schmidt*, 39 Misc. Rep. 77, 78 N. Y. Suppl. 879.

### **Sec. 387. Implied Power to Hold Provision of Will Void.**

The power to assess the tax includes the power to hold void any provision in the will and thus to decide that nothing passed under it to the beneficiary named.

*In re Ullman*, 137 N. Y. 403, 33 N. E. 480.

### **Sec. 388. Jurisdiction of Probate Courts over Estates of Non-Resident Decedents.**

Probate courts may have jurisdiction to assess a tax on the estates within their jurisdiction of non-resident decedents.

*Callahan v. Woodbridge*, 171 Mass. 595, 51 N. E. 176.

The question may be determined by an answer to the question, Had the court power to issue letters? The court holds that this interest which the non-resident testator had in a New York corporation must be held to be property within the meaning of the word as used in the code giving the surrogate's court jurisdiction over estates for purposes of administration. And hence, the surrogate's court has jurisdiction to impose the tax. *In re Fitch*, 160 N. Y. 87, 43 N. E. 701, affirming 39 N. Y. App. Div. 609.

Where the testator died domiciled in Ireland owning real estate in Montana, it was claimed by the petitioners that the inheritance tax is imposed not upon the property but upon the right or privilege to take, and that the court

must therefore have jurisdiction not only of the distribution but also of the distributees, in order to levy the tax; and that since neither of these essentials exists there can be no lawful levy of the tax in this case. But the court says that the delivery provided serves all the purposes of distribution and the power to direct the delivery is tantamount to the power to order distribution directly to the persons entitled to take. *State v. District Court*, 41 Mont. 357, 109 P. 438, 441.

### Sec. 389. Ancillary Administration in Case of Non-Resident.

Before fixing the inheritance tax on the estate of a non-resident it may be necessary to take out ancillary jurisdiction and file an inventory.

*Gardiner v. Carter*, 74 N. H. 507, 510, 69 A. 939.

Under the New York statute of 1892, the jurisdiction to assess a tax on a non-resident depends on the appointment of an ancillary administrator. And where the property of a non-resident is situated in two counties and an ancillary administrator has been appointed in one county, there can be no appointment in another county and the surrogate of the county which first obtained jurisdiction is the only surrogate who can assess the tax. *In re Hathaway*, 27 Misc. Rep. 474, 59 N. Y. Suppl. 166.

Michigan is also requiring ancillary jurisdiction under an opinion of its attorney general and the amendment of 1911, but most states do not require it.—*Ed.*

### Sec. 390. Evidence.

In New York it has been held that the statute providing that an interested person may not testify in his own behalf as to a personal transaction between himself and the deceased party, does not render the legatee incompetent to testify in a proceeding to assess a transfer tax as to the conversations and relations with the decedent,<sup>1</sup> or to show that the mutually acknowledged relation of a parent existed.<sup>2</sup>

<sup>1</sup> *In re Bentley*, 31 Misc. Rep. 651, 66 N. Y. Suppl. 95.

<sup>2</sup> *In re Brundage*, 31 N. Y. App. Div. 348, 52 N. Y. Suppl. 362.

[Evidence proper on appraisal has been treated under appraisal, *ante*, ss. 337-341.]

### Sec. 391. Burden of Proof.

The state has the burden of proving that the transfer tax should be imposed.

*In re Miller*, 77 N. Y. App. Div. 473, 78 N. Y. Suppl. 930, overruling 75 N. Y. Suppl. 929.

### Sec. 392. Appeal.

Appeal from the assessment by the court of first instance is commonly allowed to all parties interested,<sup>1</sup> including the state.<sup>2</sup>

Appeal may be an exclusive remedy for cases of incorrect valuation,<sup>2</sup> while in some states the taxpayer may have a right of action to recover taxes paid under protest although he has failed to appeal,<sup>4</sup> or he may have a right to be heard as to his liability when the court attempts to enforce its decree.<sup>5</sup> The appeal may be taken by filing notice of appeal,<sup>6</sup> which must state the grounds of appeal,<sup>7</sup> and which may be filed within a certain time after notice of the filing of the appraisal<sup>8</sup> to the court named in the statute.<sup>9</sup>

The New York statutes, curiously, provide an appeal from the surrogate sitting as a taxing officer to the surrogate sitting as a court,<sup>10</sup> where the appeal can only be sustained on evidence of error in the first appraisal.<sup>11</sup> The record should print the will of the decedent in New Jersey.<sup>12</sup>

<sup>1</sup> *People v. Sholem*, 238 Ill. 203, 87 N. E. 390.

The executors are not interested and therefore cannot appeal from the decision of the court in the question as to whether a tax is now due and payable or payable in the future, as the tax is payable by the legatees and not by the executors. *In re Handley*, 181 Pa. St. 339, 37 A. 587, reversing judgment, 3 Lack. Leg. N. 9.

<sup>2</sup> *People v. Sholem*, 238 Ill. 203, 87 N. E. 390. *In re Hull*, 109 N. Y. App. Div. 248, 95 N. Y. Suppl. 819. *In re Blackstone*, 171 N. Y. 682, affirming 69 N. Y. App. Div. 127 (comptroller of city of New York). *Humphreys v. State*, 70 Ohio St. 67, 101 Am. St. 888, 70 N. E. 907, 65 L. R. A. 776, affirming 13 Low. D. 168, 1 C. C. N. S. 1, 14 Cir. D. 238.

In Illinois it would be unconstitutional to permit an appeal only by the persons interested in the property of the estate and not by the state itself. *People v. Sholem*, 238 Ill. 203, 87 N. E. 390.

<sup>3</sup> *In re Hacket*, 14 Misc. Rep. 282, 35 N. Y. Suppl. 1051. See *Cross v. Superior Court*, 2 Cal. App. 342, 83 P. 815.

<sup>4</sup> *Beals v. State*, 139 Wis. 544, 552, 121 N. W. 347. As to refunding, see further, chapter XLVI.

<sup>5</sup> It was contended that the orphans' court had no jurisdiction to entertain the question of liability because the parties interested were debarred from raising that question by their failure to appeal from the surrogate's assessment within the time limited by the terms of section 12. The court, however, construes section 16 as empowering the orphans' court to determine whether the tax should be paid and to enforce its decree, and holds that a party interested must be deemed to be permitted to interpose any objection to such a decree. The court distinguishes *In re Wolfe*, 137 N. Y. 205, construing section 15 of the New York act, which is in substantially identical terms with section 13 of the New Jersey statute, on the ground that the New York act in section 15 expressly confers on the surrogate's court jurisdiction "to hear and determine all questions in relation to the tax arising under the provisions" of the act. The New Jersey statute, however, confers no such jurisdiction on the surrogate, but section 15 of the New Jersey act expressly confers that jurisdiction upon the ordinary or orphans' court. *In re Vineland Historical and Antiquarian Society*, 66 N. J. Eq. 291, 56 A. 1039.



<sup>6</sup> *In re Seymour*, 144 N. Y. App. Div. 151, 128 N. Y. Suppl. 775.

The admission of service of the notice of appeal by the attorney of the state comptroller cannot be accepted as a waiver of default in appealing, for the validity of the appeal depended, not upon service of notice thereof upon the attorney, but upon timely filing of the notice in the surrogate's office. *In re Seymour*, 144 N. Y. App. Div. 151, 128 N. Y. Suppl. 775.

<sup>7</sup> *In re Stone*, 56 Misc. 247, 107 N. Y. Suppl. 385.

The hearing must be limited to the errors noticed in the appeal. *In re Davis*, 149 N. Y. 539, 548, 44 N. E. 185, affirming 91 Hun 53.

An order fixing the transfer tax upon an estate is an entirety and the party claiming to be aggrieved thereby in taking an appeal should present upon that appeal every objection which he has to the order. It would lead to endless delay and confusion if he was permitted to take a separate appeal for each objection made to the order of the surrogate. The specification of one or more objections is deemed equivalent that the appellant regards the decree in all other respects correct. *In re Cook*, 194 N. Y. 400, 403, 87 N. E. 786, affirming 125 N. Y. App. Div. 114, 109 N. Y. Suppl. 417.

But where the time for appeal has gone by and subsequently a proceeding is commenced by new heirs claiming the estate and attempting to revoke the letters of administration already granted, the surrogate has jurisdiction under the notice of appeal already given to consider the new question arising, and is not excluded from doing so on the ground that it was not specified in the notice of appeal. *In re Westurn*, 152 N. Y. 93, 104, 46 N. E. 315, reversing 8 N. Y. App. Div. 59.

<sup>8</sup> *In re Belcher*, 211 Pa. St. 615, 619, 61 A. 252.

No extension of the time for appeal can be granted by the court. *In re Seymour*, 144 N. Y. App. Div. 151, 128 N. Y. Suppl. 775.

<sup>9</sup> *People v. Sholem*, 238 Ill. 203, 87 N. E. 390 (directly to the supreme court).

<sup>10</sup> The function of an appraiser is somewhat similar to a jury called by the court in an equity case to aid its conscience. The whole matter is with the surrogate and continues with him until final determination after appeal. The purpose of the appeal from the surrogate to the surrogate is not simply to review his former determination, but it is proper on the appeal to receive evidence that a certain transfer was made in contemplation of death, and that the property transfer should be included in the transfer tax. *In re Thompson*, 57 N. Y. App. Div. 317, 9 N. Y. Ann. Cas. 290, 68 N. Y. Suppl. 18.

N. Y. St. 1896, ss. 231 and 232, provide for the action of the surrogate in a dual capacity. By section 231 he may act as a taxing officer or appraiser, and under section 232 any person dissatisfied with the appraisement or assessment may appeal to the surrogate. It was insisted that this practice was anomalous and unnecessary and that an appeal could be taken from the surrogate acting as appraiser directly to the appellate division. The court remarks that it is somewhat unusual that a judicial officer should sit in review of his own decision as an assessor, but finds that this practice is proper, as the surrogate is a mere taxing officer or assessor when acting under section 231. *In re Costello*, 189 N. Y. 288, 82 N. E. 139, modifying 117 N. Y. App. Div. 807, 103 N. Y. Suppl. 6.

<sup>11</sup> *In re Johnson*, 37 Misc. Rep. 542, 75 N. Y. Suppl. 1046. *In re Thompson*, 57 N. Y. App. Div. 317, 9 N. Y. Ann. Cas. 290, 68 N. Y. Suppl. 18.

<sup>12</sup> *Astor v. State*, 75 N. J. Eq. 303, 72 A. 78.

### Sec. 393. Power to Vacate Assessment.

In New York the power of the surrogate to reverse or modify his own decree has been a fruitful source of litigation and of much difference of opinion. Changes in the law enlarging the powers of the surrogate have rendered obsolete some of the early decisions and it seems to be settled now that the surrogate can vacate or modify his decree,<sup>1</sup> even after the expiration of the time for appeal,<sup>2</sup> but only as the same power would be exercised by a court of record.<sup>3</sup> The power was held properly exercised where the surrogate acted under an unconstitutional statute,<sup>4</sup> or beyond his jurisdiction,<sup>5</sup> or in case of clerical errors,<sup>6</sup> or other manifest error,<sup>7</sup> and not merely as to questions of law,<sup>8</sup> or disputed questions of fact.<sup>9</sup>

<sup>1</sup> *In re Warren*, 62 Misc. 444, 116 N. Y. Suppl. 1034. *In re Silliman*, 175 N. Y. 513, 67 N. E. 1090, affirming 79 N. Y. App. Div. 98, 80 N. Y. Suppl. 336, reversing 77 N. Y. Suppl. 267. *Contra, In re Crerar*, 56 N. Y. App. Div. 479, 67 N. Y. Suppl. 795, 9 Ann. Cas. 101. *In re Von Post*, 35 Misc. 367, 71 N. Y. Suppl. 1039.

<sup>2</sup> *In re Mather*, 41 Misc. Rep. 414, 84 N. Y. Suppl. 1106. *In re Daly*, 34 Misc. Rep. 148, 69 N. Y. Suppl. 494. *Contra, In re Schermerhorn*, 38 N. Y. App. Div. 350, 57 N. Y. Suppl. 26.

<sup>3</sup> *In re Barnum*, 129 N. Y. App. Div. 418, 114 N. Y. Suppl. 33.

<sup>4</sup> *In re Scrimgeour*, 175 N. Y. 507, 67 N. E. 1089, affirming 80 N. Y. App. Div. 388, 80 N. Y. Suppl. 636, 78 N. Y. Suppl. 971 (after time for appeal had gone by). See *In re Backhouse*, 185 N. Y. 544, 77 N. E. 1181, affirming 110 N. Y. App. Div. 737, 96 N. Y. Suppl. 466.

<sup>5</sup> *In re Coogan*, 27 Misc. Rep. 563, 59 N. Y. Suppl. 111. *In re Backhouse*, 185 N. Y. 544, 77 N. E. 1181, affirming 110 N. Y. App. Div. 737, 96 N. Y. Suppl. 466.

<sup>6</sup> *In re Campbell*, 50 Misc. 485, 100 N. Y. Suppl. 637 (omission of debt). *In re Earle*, 74 N. Y. App. Div. 458, 77 N. Y. Suppl. 503, affirming 71 N. Y. Suppl. 1038 (defective report).

<sup>7</sup> *Morgan v. Cowie*, 49 N. Y. App. Div. 612, 63 N. Y. Suppl. 608, (where legatee died before testator). *In re Willet*, 51 Misc. 176, 100 N. Y. Suppl. 850, affirmed 119 N. Y. App. Div. 119, 104 N. Y. Suppl. 850. *In re Cameron*, 181 N. Y. 560, 74 N. E. 1115, affirming 97 N. Y. App. Div. 436, 89 N. Y. Suppl. 977.

<sup>8</sup> After the surrogate had determined the cash value of the estate subject to tax, certain judgments on claims which the executor had denied were recovered. The court holds that the power of the surrogate to correct errors is limited to clerical errors or mistakes which do not involve questions of law. *In re Connelly*, 38 Misc. Rep. 466, 77 N. Y. Suppl. 1032.

The surrogate's court has no authority to vacate its decree fixing the tax on legacies simply on the ground that certain things were included and excluded erroneously on the appraisal, as this is not a clerical error, but an error of law within the section of the code. *In re Wallace*, 28 Misc. Rep. 603, 59 N. Y. Suppl. 1084.

\* Evidence of a sale of property after the appraisal lower than the appraised valuation does not give the surrogate power to modify his decree of appraisal. *In re Lowry*, 89 N. Y. App. Div. 226, 85 N. Y. Suppl. 924. See *In re Fulton*, 30 Misc. Rep. 70, 62 N. Y. Suppl. 995 (excessive valuation sufficient ground for re-opening assessment).

**Newly Discovered Debt.** The surrogate has no power to modify an order made within his jurisdiction and allow a partial refund simply because of a newly discovered debt due by the estate after the time for appeal has expired. *In re Hamilton*, 41 Misc. Rep. 268, 84 N. Y. Suppl. 44.

### **Sec. 394. Proper Decree where Statute Misconstrued by Taxing Officials.**

Where the court finds that an unsound interpretation of the statute was adopted and enforced by the officers charged with the administration of the law, the ends of justice require that the interpretation of the statute should not be foreclosed by the decree of the court although there is nothing in the record to enable the court to say that the statute was by the collector mistakingly construed. Therefore the proceedings were dismissed without prejudice.

*High v. Coyne*, 178 U. S. 111, 20 S. Ct. 747, 44 L. Ed. 997. *Fidelity Insurance Co. v. McClain*, 178 U. S. 113, 20 S. Ct. 774, 44 L. Ed. 998.

## CHAPTER XLIII.

### COLLECTION OF TAX.

- § 395. Collection a Proper Function of Probate Courts.
- § 396. Absence of Special Machinery for Collection.
- § 397. Concurrent Jurisdiction to Recover.
- § 398. Actions of Contract against Beneficiary.
- § 399. Officers for Collection.
- § 400. Fees of Collecting Officers.
- § 401. When Proceedings Premature.
- § 402. Limitations.
- § 403. Retroactive Statute as to Limitation.
- § 404. Practice.
- § 405. Tax Officials Joined in Litigation between Other Parties.

[Law of date when proceedings began governs proceedings for collection, see *ante*, s. 22.]

[Order of court on distribution no defence, see *ante*, s. 304.]

#### Sec. 395. Collection a Proper Function of Probate Courts.

The collection of inheritance taxes is a proper function of the probate court.<sup>1</sup>

*Safety Deposit Companies.*—The Illinois act requiring safety deposit companies to give notice to state officials before delivering deposits is not void as making them in effect trustees for the state to assist it in collecting the tax, or as subjecting property to a public use without compensation, or as subjecting property to unreasonable searches and seizures.<sup>2</sup>

<sup>1</sup> *In re McPherson*, 104 N. Y. 306, 324, 10 N. E. 685, 58 Am. Rep. 502. *In re Wolfe*, 137 N. Y. 205, 33 N. E. 156, reversing 2 Connolly 600. *State v. Probate Court*, 112 Minn. 279, 128 N. W. 18, 21. [Effect of repeal, see *ante*, s. 91.]

<sup>2</sup> *National Safe Deposit Co. v. Stead*, 250 Ill. 584, 95 N. E. 973.

#### Sec. 396. Absence of Special Machinery for Collection.

The fact that the statute does not contain special provision for the ascertainment and collection of the tax cannot defeat the state's right to a recovery.<sup>1</sup> Where a plaintiff seeks to obtain a determination that the state has no right to any tax, the court will not adjudicate whether there remains a legal method of collecting the tax, as this is a matter which will be decided when the state seeks to enforce its right.<sup>2</sup>

<sup>1</sup> *Fisher v. State*, 106 Md. 104, 66 A. 661. See *In re Astor*, 20 Abb. N. Cas. 405 6 Dem. Surr. 402.

The court notices that no specific mode is designated for the collection of the tax under the act of 1909, as the court says that the legislature properly assumed that the collection had been covered elsewhere. The statute of 1893, c. 174, embraced within itself a complete system of taxation; under section 15 the duty and method of collecting the tax is provided, and this remedy is properly applied under the statute of 1909. *Knox v. Emerson*, 123 Tenn. 409, 131 S. W. 972.

The fact that there is no established practice of the probate court in like cases made and provided for the service of citations out of that court if it is a fact does not make the law unconstitutional. If the executor does not perform his duties then the method usual in such cases should doubtless prove efficacious. The practice prescribed by statute to enforce collection seems clear enough. *Union Trust Co. v. Durfee*, 125 Mich. 487, 84 N. W. 1101, 7 Detroit Leg. N. 597.

<sup>2</sup> *Trippel v. State*, 149 Cal. 521, 530, 86 P. 1084, 8 L. R. A. (N. S.) 1210.

[Effect of absence of special provision for appraisal, see ss. 339, 344.]

### **Sec. 397. Concurrent Jurisdiction to Recover.**

Jurisdiction in the probate court does not necessarily preclude concurrent jurisdiction in other courts to recover the tax.

*Fidelity & Deposit Co. v. Crenshaw*, 120 Tenn. 606, 110 S. W. 1017.

The fact that the original suit for the settlement of an estate is still pending in chancery court and the statute provides that the inheritance tax may be collected in such cases in such situs does not prevent jurisdiction by the county court under section 22 of the Tenn. St. 1893, c. 174. *Harrison v. Johnston*, 109 Tenn. 245, 70 S. W. 414.

### **Sec. 398. Actions of Contract against Beneficiary.**

If an administrator or executor actually pays over money of his decedent to a collateral distributee or legatee without retaining therefrom a tax, it becomes to the extent of the tax money had and received by him for the use of the state and an action may be maintained against such distributee or legatee therefor.

*Montague v. State*, 54 Md. 481, 487.

La. St. 1855, s. 7, declares that every person not domiciled in Louisiana and not being a citizen of any state or territory shall pay an inheritance tax of ten per cent. This tax is not a debt of the succession, it is simply a debt of the heir who happens to be domiciled in a foreign country, and therefore a suit to recover this tax should be brought directly against the heirs who under the statute owe it to the state. *Succession of Pargoud*, 13 La. Ann. 367.

### **Sec. 399. Officers for Collection.**

The responsibility for collection of the tax was early imposed in Pennsylvania on the register of wills,<sup>1</sup> or it may be the treasurer of the county where the taxable property is situated,<sup>2</sup> and a mere revenue agent should not be joined as a party to the proceedings.<sup>3</sup>

<sup>1</sup> *Alleghany County v. Stengel*, 213 Pa. St. 493, 63 A. 58.

The official bond of the register of wills does not bind him to turn over collateral inheritance taxes collected, as under the statute of 1841, c. 99, imposing collection of the inheritance taxes on the register, the legislature did not rely on his general official bond as a security for the performance of this new duty, but required a special bond for this purpose. *Commonwealth v. Toms*, 45 Pa. St. (9 Wright) 408.

<sup>2</sup> See *San Diego v. Schwartz*, 145 Cal. 49, 78 P. 231.

The words "proper county" evidently refer to the county of the surrogate first properly acquiring jurisdiction, and the surrogate of a county retains such jurisdiction throughout all proceedings even should there be real estate in every county in the state. *In re Keenan*, 5 N. Y. Suppl. 200, 1 Con. Surr. 226.

<sup>3</sup> The fact that a revenue agent was joined with the county attorney in a proceeding to collect an inheritance tax did not render the petition bad on demurrer although a motion to strike the name of the revenue agent from the petition would have been proper. *Commonwealth v. Gaulbert*, 134 Ky. 157, 119 S. W. 779.

## Sec. 400. Fees of Collecting Officers.

In almost all the states the system prevails of paying the collection officers a salary, with no fees in addition,<sup>1</sup> but in Tennessee compensation is on the percentage basis.<sup>2</sup>

<sup>1</sup> *San Diego v. Schwartz*, 145 Cal. 49, 78 P. 231. *Succession of Levy*, 115 La. 378, 39 S. 37, affirmed *Cohen v. Brewster*, 203 U. S. 552, 27 S. Ct. 174, 51 L. Ed. 310. *Banks v. State*, 60 Md. 305 (register of wills).

<sup>2</sup> *Shelton v. Campbell*, 109 Tenn. 690, 72 S. W. 112 (state revenue agent entitled to a fee of five per cent as attorney for county clerk under the act of 1893). *Harrison v. Johnston*, 109 Tenn. 245, 70 S. W. 414 (district attorney allowed no fee under the act of 1893).

In a proceeding under the Tennessee statute of 1909, which is but a supplement of the statute of 1893, the attorney of the county court clerk is entitled to a fee to be paid by the taxpayer. *Knox v. Emerson*, 123 Tenn. 409, 131 S. W. 972.

## Sec. 401. When Proceedings Premature.

Authority to commence proceedings after refusal to pay the tax implies that no process to enforce the tax can be instituted within the time allowed for payment, and any such proceeding is premature.

*Frazer v. People*, 3 N. Y. Suppl. 134 6 Dem. Surr. 174 (no costs against the taxpayer should be allowed).

## Sec. 402. Limitations.

A general statute of limitations will not usually cover inheritance taxes,<sup>1</sup> but where the state fails to collect the collateral inheritance tax for a period of twenty years from the death of the

decendent, a presumption of payment arises as to *bona fide* purchasers from those to whom the remainder in fee descended.<sup>2</sup> The Massachusetts statute of 1891, providing that executors and administrators shall be liable for the taxes until paid, plainly imports that nothing except payment shall operate as a discharge or bar the collection of the tax.<sup>3</sup> The limitation may run only from the death of the life tenant on remainder interests<sup>4</sup> in favor of purchasers without notice,<sup>5</sup> and may not affect the personal liability of executors.<sup>6</sup> The Massachusetts act of 1891, which provides that taxes shall be due at the expiration of two years and that the treasurer shall bring suit within six months after the taxes are due and payable, does not operate to set a limit of two years and six months on the right of recovery, but the provision as to action is directory merely.<sup>7</sup>

<sup>1</sup> The Massachusetts Revised Laws, chapter 202, section 2, provide for six years' limitation on actions of contract founded upon contracts or liabilities expressed or implied. The court holds that a petition under the inheritance statute for the fixing of the inheritance tax is not included in this limitation, although the limitation applies expressly to "actions brought by the commonwealth or for its benefit." The court holds that a tax is not a debt in the ordinary sense of the word and is not founded upon a contract expressed or implied, and the collector cannot maintain an action to recover it except as authorized by statute.

The word "liability" is, it is true, of large significance, but as used in the general and special statutes of limitations refers plainly to liabilities of a contractual nature and not to proceedings to collect the inheritance tax. *Bradford v. Storey*, 189 Mass. 104, 75 N. E. 256.

<sup>2</sup> *Appeal of Mellon*, 114 Pa. St. 564, 573, 8 A. 183, although no administration taken out and matter never called to attention of register. See *In re Stewart*, 147 Pa. St. 383, 23 A. 599, presumed after 42 years that register did his duty.

<sup>3</sup> *Howe v. Howe*, 179 Mass. 546, 549, 55 L. R. A. 626.

<sup>4</sup> *Appeal of James*, 2 Del. Co. Rep. (Pa.) 164. *Appeal of Mellon*, 114 Pa. St. 564, 570, 8 A. 183.

<sup>5</sup> *Appeal of James*, 2 Del. Co. Rep. (Pa.), 164.

<sup>6</sup> *In re Cullen*, 8 Pa. Super. Ct. 234.

<sup>7</sup> *Howe v. Howe*, 179 Mass. 546, 55 L. R. A. 626.

### Sec. 403. Retroactive Statute as to Limitation.

A statute providing that the limitation should be no defence to a proceeding to collect the tax is retroactive, and will be so construed as to permit actions for collection already barred under existing statute.

*In re Moench*, 39 Misc. Rep. 480, 80 N. Y. Suppl. 222. *In re Strang*, 117 N. Y. Div. App. 796, 102 N. Y. Suppl. 1062.

As to retroactive laws, see further, *ante*, s. 73 *et seq.*

### Sec. 404. Practice.

Proceedings may be commenced on notice to the district attorney<sup>1</sup> and an affidavit of probable cause,<sup>2</sup> and amendments to the complaint may be allowed as in other matters.<sup>3</sup>

<sup>1</sup> *In re Vanderbilt*, 10 N. Y. Suppl. 239, 2 Con. Surr. 319.

<sup>2</sup> An affidavit which simply says that the comptroller notified the district attorney and that the proceedings were commenced in good faith furnishes no evidence as to the facts and circumstances from which the court may form an opinion as to the existence of probable cause. *In re McCarthy*, 5 Misc. Rep. 276, 25 N. Y. Suppl. 987.

<sup>3</sup> Where the treasurer in his original application claims a tax of three per cent after the expiration of the period within which the right to sue for the tax is limited the application may be amended by asking that the tax be computed at different rates depending on the finding of the court as to the facts, as this amendment does not set up a new or different cause of action but merely corrects the statement in the original application as to the rate at which the tax should be computed. *Connell v. Crosby*, 210 Ill. 380, 71 N. E. 350.

[Notice to parties, see *ante*, ss. 71, 72.]

### Sec. 405. Tax Officials Joined in Litigation between Other Parties.

The state comptroller in New York is not a necessary party to an action for the specific performance of an ante-nuptial contract.<sup>1</sup> Where an executor in Massachusetts was sued by a legatee for his legacy, the executor had the state treasurer summoned in as a party to settle the inheritance tax, and the treasurer withdrew his objection to being brought in.<sup>2</sup>

<sup>1</sup> *In re Kidd*, 115 N. Y. App. Div. 205, 100 N. Y. Suppl. 917, reversed on another point in 188 N. Y. 274, 80 N. E. 924.

<sup>2</sup> *Essex v. Brooks*, 164 Mass. 79, 41 N. E. 119.

**Subrogation of Corporation Paying Taxes.**—In those states where the corporation becomes liable when it permits a transfer of stock without the payment of taxes, it would seem possible that a corporation would have a right of action over against the estate liable for the tax, although no cases on this subject have yet been reported. An action of quasi-contract might possibly lie, or recovery might be had on the ground of suppression of facts by the executors on transfer. For cases somewhat analogous, see *Dana v. Colby*, 63 N. H. 169; *Ede Company v. Heywood*, 153 Cal. 615.



## CHAPTER XLIV.

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### LIEN.

§ 406. Real Estate.

§ 407. Lien on Whole Property where Life Tenancy and Remainder Exists.

§ 408. Priority as against Mortgage.

§ 409. Effect of Partition.

§ 410. Effect of Judicial Sale.

§ 411. No Personal Liability on Purchaser.

#### **Sec. 406. Real Estate.**

The lien on real estate may be confined to realty specifically devised, but is usually expressly provided otherwise by the statute.

*Brown v. Lawrence Park Realty Co.*, 133 N. Y. App. Div. 753, 118 N. Y. Suppl. 132. (Direction in will to sell land to pay legacies avoids lien on land.)

#### **Sec. 407. Lien on Whole Property where Life Tenancy and Remainder Exists.**

Where real estate was left to a life tenant with remainder to the brothers and sisters who survived, with a contingent remainder over, the court holds that the property is subject to a lien for the payment of the whole tax, and that if there is no money forthcoming to pay the whole tax, it is the duty of the executor to pay it. And the court directs the sale of so much of the whole of that property as may be necessary to raise the fund to pay the whole tax.

*In re Wilcox*, 118 N. Y. Suppl. 254.

#### **Sec. 408. Priority as against Mortgage.**

On the foreclosure of a mortgage where the mortgagor has died, the lien of the transfer tax under the New York act of 1892, although subordinate to the mortgage, still cannot be wiped out, as the statutes give the mortgagee no right to make the state a party to the foreclosure proceedings; and therefore the mortgagee cannot tender a title which a purchaser is bound to take.

*Kitching v. Shear*, 26 Misc. Rep. (N. Y.) 436, 57 N. Y. Suppl. 464.

"This lien, however, was not paramount to the lien of the mortgage, which was in existence prior to the decease of the testatrix. So far as the mortgagee is concerned, his rights could not well be impaired by subsequent devolutions of the title and the creation of liens associated therewith. The tax in question is not to be assimilated with the general taxes which are imposed by public authority, and which attach to property affected thereby as a whole, and without discrimination with respect to particular estates or interests therein. The right of the state in such cases is always paramount. It is not concerned with the particular estates or liens which affect the property, but, dealing with it as a whole, imposes the tax, leaving it to the parties interested in the property to secure, as between themselves, such an adjustment of the burden as the circumstances of the case may seem to require. But in the case of the transfer tax a different condition exists. It is imposed upon the right of succession, and is levied upon successors in respect to the shares to which they succeed. *In re Hoffman*, 143 N. Y. 327, 331, 38 N. E. 311. In no sense, then, can the tax be deemed to affect the interest of one who had a lien upon the property which was paramount to the ownership of the testatrix, and therefore superior to any estate or interest which the testatrix might assume to create in the property." *Per Beekman, J.*, in *Kitching v. Shear*, 26 Misc. Rep. 436, 57 N. Y. Suppl. 464.

#### Sec. 409. Effect of Partition.

Where the decedent owned an undivided third of an entire tract of land, partition of his interest could not have the effect of apportioning the lien and fixing a part thereof exclusively on any one lot.

*Appeal of Mellon*, 114 Pa. St. 564, 574, 8 A. 183.

#### Sec. 410. Effect of Judicial Sale.

The lien for the tax should not prevent the sale of realty by the court, as the lien may be transferred to the proceeds of the sale.<sup>1</sup> In a Pennsylvania case the intestate died leaving real estate, which was apportioned among his collateral heirs after his death. Subsequently the share of one of the heirs was sold by judicial sale to satisfy debts and liens against the heir; and the court holds that the lien of the whole of the collateral inheritance tax on the whole of the land was satisfied and discharged by this sale, inasmuch as the money realized from the sale was more than sufficient to have paid the tax lien, and should have been so applied. The fact that the amount of the lien had not been ascertained to have been fixed cannot affect the result.<sup>2</sup>

<sup>1</sup> As the proceeds arising from the sale either are now in court or will be paid into court and will in any event be subject to the order of the court, the objection is without merit. The lien of the state is against the property of the decedent and will first be satisfied out of any personal estate left by him and if this

sum is not sufficient then the real estate may be subjected to the payment of this claim of the state, and the trial court can make such order with the entire estate under its control as is necessary to satisfy any claim of the state against the estate for taxes, inheritance or otherwise. *Mandel v. Fidelity Trust Co.*, 128 Ky. 239, 32 Ky. L. Rep. 1104, 107 S. W. 775.

<sup>2</sup> *Appeal of Mellon*, 114 Pa. St. 574, 8 A. 183.

### **Sec. 411. No Personal Liability on Purchaser.**

One who buys land subject to the lien of the inheritance tax may incur no personal liability on account of the tax. The lien can be enforced against the land, but no personal judgment can be rendered against him therefor.<sup>1</sup>

The court suggests that the statute should provide a lien on property not extending to an innocent purchaser for value without notice.<sup>2</sup>

<sup>1</sup> *Wilhelmi v. Wade*, 65 Mo. 39 (under the United States act of 1864).

<sup>2</sup> *In re McKennan*, 25 S. D. 369, 126 N. W. 611 (reversed on rehearing, 130 N. W. 33).

## CHAPTER XLV.

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### PAYMENT.

§ 412. **Pecuniary Legacies.**

§ 413. **Form of Receipts.**

[As to time of payment see further, *ante*, s. 299 *et seq.*]

#### **Sec. 412. Pecuniary Legacies.**

In the case of a money legacy the tax may be deducted from it and the balance paid to the legatee.

*In re Hoyt*, 37 Misc. 720, 76 N. Y. Suppl. 504.

#### **Sec. 413. Form of Receipts.**

The receipts should not be so framed in California as to bind the state or conclude its right to have the question reviewed on appeal. The receipt should be only for so much money on account of the tax.

*Becker v. Nye*, 8 Cal. App. 129, 96 P. 333.

## CHAPTER XLVI.

### REFUNDING TO TAXPAYER.

- § 414. What Law Governs.
- § 415. When.
- § 416. Proceedings.
- § 417. Interest.
- § 418. Defences. — Stoppel and Limitation.

#### Sec. 414. What Law Governs.

The right to obtain a refund of a tax is governed by the law in effect at the time that the proceeding is commenced, and not by the law in force at the death of the testator.

*In re Coogan*, 27 Misc. Rep. 563, 59 N. Y. Suppl. 111.

#### Sec. 415. When.

Taxes computed on a mistaken construction of law<sup>1</sup> or paid as a temporary payment<sup>2</sup> should be refunded. Money paid by executors on a life estate, in ignorance of the fact that the life estate had been terminated by death, may be recovered back by the executors as paid under a mistake of fact. This is not a voluntary payment, as to constitute a voluntary payment it must be made with full knowledge of all the facts and circumstances.<sup>3</sup> Where a beneficiary under misconception of the law advanced the money to pay more than was really chargeable to him, and where the property is sold for the tax, he is subrogated to the rights of the state and should be repaid what he has erroneously paid.<sup>4</sup>

<sup>1</sup> *Sherman v. United States*, 178 U. S. 150, 152, 20 Sup. Ct. 779.

<sup>2</sup> *In re Skinner*, 106 N. Y. App. Div. 217, 94 N. Y. Suppl. 144, modifying 92 N. Y. Suppl. 972.

<sup>3</sup> *Kahn v. Herold*, 147 Fed. 575, affirmed in 86 C. C. A. 598, 159 Fed. 608, 163 Fed. 947 (under U. S. St. 1898).

<sup>4</sup> *In re Wilcox*, 118 N. Y. Suppl. 254.

#### Sec. 416. Proceedings.

Refunding should be accomplished under proceedings expressly provided by statute,<sup>1</sup> only by an official authorized by law,<sup>2</sup> or as an incident of an order vacating a tax,<sup>3</sup> and may be ordered

<sup>even</sup> though no appeal from the imposition of the tax was taken.<sup>4</sup> The tax may be paid under protest and then action brought for refunding,<sup>5</sup> or refunding may be compelled by mandamus. Where the New York statute of 1896, section 225, as amended by the New York statute of 1897, chapter 284, provides that if the surrogate modifies or reverses his order fixing the tax, the state comptroller shall by order direct and allow the refunding of the tax, a mandamus is the proper proceeding to compel the state comptroller to make the refund.<sup>6</sup>

<sup>1</sup> *In re Sherar*, 25 Misc. 138, 54 N. Y. Suppl. 930, 2 Gibbons 28. *Thacher v. United States*, 149 Fed. 902.

The act of 1887 provides a simple proceeding for the reimbursement of money paid for an inheritance tax and was intended to be exclusive for this object, and therefore the taxpayer has no rights under section 1323 of the code authorizing the appellate court in reversing a judgment to make restitution of property lost by judgment. *In re Howard*, 54 Hun 305, 7 N. Y. Suppl. 594. *In re Hall*, 54 Hun 637, 7 N. Y. Suppl. 595.

<sup>2</sup> *People v. Griffith*, 245 Ill. 532, 543, 92 N. E. 313 (state and not county treasurer). See *In re Park*, 8 Misc. Rep. 550, 29 N. Y. Suppl. 1081 (surrogate may order county treasurer to refund under the act of 1892).

<sup>3</sup> The surrogate may refuse to insert in an order vacating an assessment a direction to the state comptroller to refund the amount of the tax. Such an order is entirely proper but is not essential, as the statute itself commands the state comptroller to direct the treasurer of the county or the comptroller of the city of New York to refund. *In re Cameron*, 181 N. Y. 560, 74 N. E. 1115, affirming 97 N. Y. App. Div. 436, 89 N. Y. Suppl. 977.

<sup>4</sup> *In re Sherar*, 25 Misc. Rep. 138, 54 N. Y. Suppl. 930, 2 Gibbons, 28.

<sup>5</sup> The tax was paid on demand under written protest giving the grounds for refusal in *Knowlton v. Moore*, the case arising under the United States revenue act, the testator being domiciled in New York state. On denial of a petition for refunding action was brought in the U. S. circuit court. *Knowlton v. Moore*, 178 U. S. 41, 20 S. Ct. 747, 44 L. Ed. 969.

<sup>6</sup> *In re Coogan*, 27 Misc. Rep. 563, 59 N. Y. Suppl. 111.

## Sec. 417. Interest.

The refunding of a tax carries interest on the amount refunded,<sup>1</sup> as in case of taxes paid under an unconstitutional statute.<sup>2</sup>

<sup>1</sup> *In re Wilcox*, 118 N. Y. Suppl. 254. *Contra, Wieting v. Morrow*, (Iowa 1911,) 132 N. W. 193, denying the right to interest unless expressly ordered by statute.

Interest may be allowed in a suit to recover legacy taxes paid, as it is not in form an action against the United States. *Kinney v. Conant*, 166 Fed. 720, 92 C. C. A. 410.

<sup>2</sup> *In re Wood*, 91 N. Y. App. Div. 3, 86 N. Y. Suppl. 269.

"The tax in question was imposed and collected by the state under color of a law that was absolutely void. It was a void tax and not

merely voidable for some irregularity or error, and had no support except an unconstitutional statute. Such a law is simply void. It confers no rights, imposes no duties, confers no power, and in legal contemplation is as inoperative, for any purpose, as if it had never been passed." *Per* O'Brien, J. Therefore the only question for the court is whether, the comptroller having received the money without right and used it for the purposes of the state under a promise to refund, it was properly charged by the court with interest. The court holds that as the state has promised to refund the tax the obligation to refund money received and retained without right implies and carries with it the right to interest, although section 225 makes no mention of interest while section 256 relating to the repayment of illegal or excessive taxes expressly provides for the payment of interest. *In re* O'Berry, 179 N. Y. 285, 287, 72 N. E. 109, affirming 91 N. Y. App. Div. 3.

### Sec. 418. Defences. — Estoppel and Limitations.

One may be estopped from claiming a refund,<sup>1</sup> or barred by limitations,<sup>2</sup> although a general statute of limitations may not be a bar.<sup>3</sup>

<sup>1</sup> Where a person was named as a life tenant in a will who really was the owner of the property under a deed in his possession and he testifies that he is only a life tenant and does not disclose his ownership under the deed and pays the tax as life tenant, the surrogate court eight years later refuses to allow a refunding of the tax. *In re* Mather, 41 Misc. Rep. 414, 84 N. Y. Suppl. 1105.

<sup>2</sup> An illegal tax was paid in November, 1895, and the law then in force, the statute of 1892, gave the taxpayer five years in which to apply for a refund of any part of the transfer tax. This period had not expired when the statute of 1897, c. 284, went into effect, apparently providing for an unlimited period in which to apply for a modification or reversal of the original order but requiring the application for the refund to be made within one year after such modification or reversal. N. Y. St. 1900, c. 382, limited the period within which both the application for modification or reversal and for a refund must be made to two years. The taxpayer applied to the surrogate in October, 1903, for an order modifying the original order which fixed the transfer tax and the court holds that under section 6, article 7, of the state constitution, which provides that "neither the legislature, the canal board nor any person or persons acting in behalf of the state shall audit, allow or pay any claim which, as between citizens of the state, would be barred by lapse of time," it seems clear that the comptroller could not have audited, allowed or paid this claim even if the two years limitation in the statute of 1900 did not apply. While it is to be observed, moreover, that the statute of 1900, with its two years limitation, is to be treated as purely prospective, the same test must be applied to the act of 1897, in which event the respondent is relegated to the statute of 1892 with its five years limitation which had elapsed by more than three years before he sought relief. *In re* Hoople, 179 N. Y. 308, 313, 72 N. E. 229, reversing 93 N. Y. App. Div. 486, 87 N. Y. Suppl. 842.

<sup>3</sup> *In re* Sherar, 25 Misc. Rep. 138, 54 N. Y. Suppl. 930, 2 Gibbons 28.

**INHERITANCE TAX LAW.**

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**STATUTES ANNOTATED.**





# STATUTES ANNOTATED.

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## ALABAMA.

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### In General.

Alabama had a collateral inheritance tax on personal property only from 1848 to 1868. The constitution of 1901 forbids a direct inheritance tax, and limits any collateral inheritance tax that may be enacted to  $2\frac{1}{2}$  per cent. No inheritance tax law has been enacted since the adoption of this constitution.

### Constitutional Limitations.

**Alabama Constitution, 1901, s. 219.**

The legislature may levy a tax of not more than two and one-half per centum of the value of all estates, real and personal, money, public and private securities of every kind, in this state passing from any person who may die seized and possessed thereof, or of any part of such estate, money or securities, or interest therein transferred, by the intestate laws of this state or by will, deed, grant, bargain, sale or gift, made or intended to take effect in possession after death of the grantor, deviser or donor, to any person or persons, bodies politic or corporate, in trust or otherwise, other than to or for the use of the father, mother, husband, wife, brothers, sisters, children or lineal descendants of the grantor-deviser, donor or intestate.

### List of Statutes.

- 1847-48. No. 1, s. 86.
- 1849-50. No. 1, s. 1.
- 1862. No. 1, ss. 2, 24.
- 1864. No. 63, 64.
- 1865-66. No. 1, ss. 2, 3.
- 1866-67. No. 260, ss. 2, 4.
- Code of 1867. ss. 434, 436.
- 1868. No. 1.

### The Early Statutes.

Ala. St. 1847-48, No. 1, s. 86, imposed a tax of two per cent on all gifts by will of personal or real property to any person other than the child, grandchild, brother or sister, children or wife of the testator; and provided further that the executor should pay the tax before distribution.

Ala. St. 1849-50, No. 1, s. 1, p. 7, imposed a tax of two dollars on every one hundred dollars of the amount of any legacy or

bequest to any person other than to the child, adopted child, grandchild, brother, sister, wife or husband, father or mother. The statutes further imposed a tax of two dollars on every one hundred dollars of the amount of property received by deed of gift to any person or corporation other than to a child, adopted child, grandchild, brother, sister, mother or father.

Ala. St. 1851-52, c. 1, of the revenue act contains no reference to inheritance taxes.

Ala. St. 1853-54, No. 1, for the assessment of the revenue taxes contains no reference to inheritance taxes.

Ala. St. 1855-56, Ala. St. 1857-58, Ala. St. 1859-60, contain no revenue nor inheritance tax statute.

Ala. St. 1862, No. 1, s. 2, par. 26, provides a tax of five per cent on every legacy on which letters testamentary have not been taken out in Alabama received by any person other than the child, adopted child, grandchild, brother, sister, father, mother, husband or wife, and on all property given by deed or otherwise to any such person.

Ala. St. 1862, No. 1, s. 24, provides a tax of five per cent on every legacy on which letters testamentary are taken out in this state.

Ala. St. 1864, No. 63, provides an additional tax of fifty per cent on all taxes now imposed and on all present subjects of taxation.

Ala. St. 1864, No. 64, s. 1, imposes an additional tax of thirty-three and one-third per cent on all subjects of taxation embraced in the revenue act of 1862.

Ala. St. 1865-66, No. 1, s. 2, par. 10, imposes a tax of three per cent on every legacy where letters testamentary have not been taken out in Alabama, received by any person other than the child, adopted child, brother, sister, father, mother, husband or wife, and on all property given by deed or otherwise to any such person on the amount or value thereof.

Ala. St. 1865-66, No. 1, s. 3, par. 1, provides a tax of one and one-half per cent on every legacy subject to assessment left by any will on which letters testamentary are taken out in Alabama.

Ala. St. 1866-67, No. 260, s. 2, par. 9, provides a tax on every legacy where letters testamentary have not been taken out in Alabama, received by any person other than the child, adopted child, grandchild, brother, sister, father, mother, husband, wife, and on all property given by deed or otherwise to any such person, on the amount or value thereof, to be assessed to the beneficiary, guardian, trustee or legal representative at the rate of three per cent.

Ala. St. 1866-67, No. 260, s. 4, par. 1, imposes a tax on every legacy subject to assessment, unless letters testamentary are taken out in Alabama, of one and one-half per cent.

Ala. Code, 1867, c. 3, a. 2, s. 434, par. 9, provides a tax on every legacy where letters testamentary have not been taken out in Alabama received by any person other than the child, adopted child, grandchild, brother, sister, father, mother, husband or wife, and on all property given by deed or otherwise to any such person, of three per cent.

Ala. Code, 1867, s. 436, imposes a tax on every legacy subject to assessment on which letters testamentary are taken out in Alabama, of one-half of one per cent.

Ala. St. 1868, No. 1, p. 297, revenue law, omits any reference to the inheritance tax.

## ALASKA.

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The Alaskan Organic law contains no reference to an inheritance tax or uniformity of taxation. See Thorpe, *American Charters, Constitutions and Organic Laws*, Vol. 1, pp. 235, *et seq.*

There is no inheritance tax at present in Alaska.

## ARIZONA.

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### In General.

Arizona has no inheritance tax and has never had an inheritance tax.

### Proposed Constitution.

**Constitution of 1911, a. 9.**

S. 1. The power of taxation shall never be surrendered, suspended or contracted away. All taxes shall be uniform upon the same class of property within the territorial limits of the authority levying the tax and shall be levied and collected for public purposes only.

S. 12. The law-making power shall have authority to provide for the levy and collection of license, franchise, gross revenue, excise income, collateral and direct inheritance, legacy and succession taxes, also graduated income taxes, graduated collateral and direct inheritance taxes, graduated legacy and succession taxes, stamp, registration, production or other specific taxes.

## ARKANSAS.

### In General.

Arkansas adopted a collateral inheritance tax in 1901 and extended the tax to direct inheritances in 1907. The attorney general has ruled that the exemptions apply to the estate as a whole, not to the individual shares.

We are advised by the attorney general's office that shares of stock in an Arkansas corporation owned by a non-resident decedent and passing to a non-resident beneficiary are subject to the inheritance tax, as being property within the jurisdiction of the state of Arkansas, on the ground that as the domicile of the corporation is in Arkansas and its capital stock is taxable in Arkansas, any of that stock owned by a decedent, whether a resident or a non-resident, would be liable to a succession tax.

On the other hand, the tax commissioner of Connecticut is officially informed that Arkansas does not tax shares of stock in Arkansas corporations owned by non-resident decedents when such shares of stock were physically out of the state on the date of the death of the decedent, and for that reason has ruled that the retaliative provision of the Connecticut law does not apply to residents of Arkansas. The usual provision holding the corporations responsible for the collection of the tax is not found in the Arkansas statutes, and it contains no specific reference to the property of non-residents. The tax has been producing less than \$1,000 per year.

### List of Statutes.

- |       |                                |          |                 |
|-------|--------------------------------|----------|-----------------|
| 1901. | Statutes of Arkansas,          | act 156, | p. 295.         |
| 1903. | " " "                          | act 89,  | p. 153.         |
| 1907. | " " "                          | act 345, | p. 832.         |
| 1909. | " " "                          | act 303, | p. 904.         |
|       | Kirby's digest of the statutes | (1901),  | ss. 244 to 253. |
|       | " " " " "                      | (1903),  | ss. 242, 243.   |

### Constitutional Limitations.

**Arkansas Constitution, 1874, a. 16, s. 5.**

All property subject to taxation shall be taxed according to its value; that value to be ascertained in such manner as the general assembly shall direct, making the

same equal and uniform throughout the state. No one species of property, from which a tax may be collected, shall be taxed higher than another species of property of equal value: Provided, the general assembly shall have power, from time to time, to tax hawkers, pedlers, ferries, exhibitions and privileges in such manner as may be deemed proper: Provided further, that the following property shall be exempt from taxation: Public property used exclusively for public purposes, churches used as such, cemeteries used exclusively as such, school buildings and apparatus, libraries and grounds used exclusively for school purposes, and buildings and grounds and materials used exclusively for public charity.

## STATUTES.

**Ark. St. 1901, c. 156.** Approved May 23, 1901.

S. 1. All property within the jurisdiction of this state, and any interest therein, whether belonging to inhabitants of this state or not, and whether tangible or intangible, which shall pass by will or by the intestate laws of this state, or by deed, grant, sale or gift, made or intended to take effect in possession after the death of the grantor, to any person or corporation in trust or otherwise, other than to or for the use of the father, mother, husband, wife, lineal descendant, adopted child and the lineal descendants of an adopted child of decedent, shall be liable to a tax of five (5) per centum of its value for the use of the state; and all executors, administrators and other trustees, and any such grantee under a conveyance made during the grantor's life, shall be liable for all such taxes, with interest until the same shall have been paid as hereinafter directed.

Section 2 provides for the appraisal of estates in remainder to collaterals within sixty days after the death of the testator, and the payment of the tax within one year. Section 3 provides for a tax on a gift to an executor or trustee above reasonable compensation for his services. Section 4 provides that taxes shall be payable one year from the death of testator with interest at nine per cent from that time. The remaining sections provide for the collection of the tax.

**Ark. St. 1903, c. 89,** approved March 20, 1903, amends Ark. St. 1901 by exempting from the tax the grandmother, grandfather, brother and sister or any child thereof of the decedent.

**Ark. St. 1907, c. 345,** approved May 17, 1907, amended the existing law by providing a tax of one per cent on lineals and brother and sister with an exemption as follows: "Provided, that any estate which may be valued at a less sum than \$20,000 shall not be subject to any such tax, the excess over such sum only being taxable." The tax on collaterals except brother and sister is two per cent on the value of property in excess of \$5,000. In all other cases the rate is three per cent on all estates of \$10,000 or less;

four per cent on estates of \$10,000 to \$20,000; five per cent on estates of \$20,000 to \$50,000, "provided that an estate not exceeding \$2,000 in value shall not be subject to tax."

Ark. St. 1909, c. 303, was approved and went into force May 31, 1909, and provided an entirely new act throughout.

### THE PRESENT ACT.

Ark. St. 1909, c. 303. Approved May 31, 1909.

AN ACT TO IMPOSE A TAX BASED UPON THE RIGHTS OF SUCCESSION to gifts, legacies and inheritances in certain cases, and to provide for the collection of such taxes.

#### Transfers Taxable.

S. 1. All property within the jurisdiction of this state, and any interest therein, whether belonging to inhabitants of this state or not, or whether tangible or intangible, which shall pass by will or by the intestate laws of this state, or by deed, grant, sale or gift made or intended to take effect in possession after the death of the grantor to any person or corporation in trust or otherwise, shall be liable to tax for the use of the state at the rate hereinafter specified.

#### Liabilities.—Lien.—Limitations.

S. 2. All executors, administrators and other trustees, and all heirs or beneficiaries taking under a will or by virtue of the intestate laws, and any such grantee under a conveyance made during the life of the grantor, shall be liable for all such taxes, with interest, until the same shall have been paid as herein provided. And said tax shall be and continue a lien upon the property chargeable therewith until paid to the state; *provided*, that all inheritance taxes shall be sued for within five years after they are due and legally demandable, otherwise they shall be presumed to be paid and cease to be a lien as against any purchasers of real estate.

#### Rates.

S. 3. When the property or any interest therein shall pass to a grandfather, grandmother, father, mother, husband, wife, lineal descendant, brother, sister, or any adopted child, in every such case the rate of tax shall be one dollar on every hundred dollars of the clear market value of such property received; *provided*, that any estate which may be valued at a less sum than five thousand dollars (\$5,000) shall not be subject to any tax, the excess over such sum only being taxed.

S. 4. When the property or any interest therein shall pass to any uncle, aunt, niece, nephew, or any lineal descendant of the same, in every such case the rate of tax shall be two dollars on every one hundred dollars of the clear market value of such property received, in excess of the sum of \$2,000.

S. 5. In all other cases the rate shall be as follows: On each and every one hundred dollars of the clear market value of all property and at the same rate for any less amount, on all estates of \$10,000 and less, \$3.00; on all estates of over \$10,000 and not exceeding \$20,000, \$4.00; on all estates of over \$20,000 and not exceeding \$50,000, \$5.00; on all estates exceeding \$50,000, \$6.00; *provided*, that an estate of not exceeding \$1,000 in value shall not be subject to tax.

**Particular Estates and Remainders.**

S. 6. When any person shall bequeath or devise any property to or for the use of grandfather, grandmother, father, mother, husband, wife, lineal descendant, brother, sister, or any child thereof, an adopted child or any heir of an adopted child, or any lineal descendant thereof, during life or for a term of years, and remainder to another, the value of the prior estate shall within sixty days after the death of the testator be appraised in the manner hereinafter provided and shall be taxable as provided in the preceding sections; and the inheritance tax on the remainder of the estate shall be held in abeyance until the beneficiary shall come into possession of same, and shall thereupon likewise be taxable as therein provided.

**Gifts to Executors or Trustees.**

S. 7. Whenever a decedent appoints one or more executors or trustees, and in lieu of their allowance makes a devise or bequest of property to them which would otherwise be liable to said tax, or appoints them his residuary legatees, and said bequests, devises or residuary legacies exceed what would be a reasonable compensation for their services, such excess shall be liable to such tax, and the court of probate having jurisdiction of their accounts shall fix the amount of such compensation.

**When Tax Accrues. — Interest.**

S. 8. All taxes imposed by this act shall be due and payable to the treasurer of the state by the executors, administrators, trustees, heirs or beneficiaries, at the death of the decedent, and if paid within twelve months no interest shall be charged and collected thereon, but if not paid, interest at the rate of nine per cent per annum shall be charged and collected from the time said tax became due.

**Inventory.**

S. 9. It shall be the duty of every administrator, executor or trustee having in charge or trust any property subject to said tax to file in the probate court of the county of the decedent's death, in addition to the inventory of personal property now required, a true inventory of the real estate owned by the decedent at the date of his death, and to collect the tax thereon from the devisee or person entitled to said property; and he shall not deliver any specific legacy or property subject to said tax to any person until he has collected the tax thereon.

**Tax to be Deducted.**

S. 10. Whenever any legacies subject to said tax shall be charged upon or payable out of any real estate, the heir or devisee, before paying the same, shall deduct said tax therefrom and pay it to the executor, administrator or trustee, and the same shall remain a charge upon said real estate until it is paid; and payment thereof shall be enforced by the executor, administrator or trustee in the same manner as the payment of the legacy itself could be enforced. If any such legacy be given in money to any person for a limited period, such administrator, executor or trustee shall retain the tax on the whole amount; but if it be not in money, he shall make an application to the court having jurisdiction of his accounts to make an apportionment, if the case require it, of the sum to be paid into his hands by such legatee on account of said tax and for such further order as the case may require.

**Appraisal.**

S. 11. The value of such property as may be subject to said tax shall be its actual value as found by the court of probate, after notice to all persons interested



in the succession to said property served for the time and in the manner required by law in proceedings for the assignment of dower. But the state treasurer, or any person interested in the succession to said property may apply to the court of probate having jurisdiction of the estate or to any circuit court having jurisdiction, in case there is no administration, and on such application said court shall appoint three disinterested persons, who, being first sworn, shall view and appraise such property at its actual market value for the purpose of said tax, and shall make return thereof to the court, which return may be accepted by the said court, and if accepted shall be binding. And the fees of the appraiser shall be such as are customary in the administration of estates. In the case of an annuity or life estate the value thereof shall be determined by the tables of mortality employed by insurance actuaries, and five per centum compound interest.

#### **Jurisdiction of Probate Court.**

S. 12. The court of probate having either principal or auxiliary jurisdiction of the settlement of the estate of a decedent shall have jurisdiction to hear and determine all questions in relation to said tax that may arise affecting any devise, legacy or inheritance under this act, subject to appeal as in other cases, and the state treasurer, through the attorney general, shall represent the interests of the state in any such proceedings.

#### **Tax to be Paid before Accounts Settled. — Vouchers.**

S. 13. No final settlement of the account of any executor, administrator or trustee shall be confirmed by any probate court unless it shall show, and the court shall find, that all taxes imposed by the provisions of this act upon any property or interest therein belonging to the estate to be settled by said account shall have been paid, and the receipt of the treasurer of the state for such tax shall be the proper voucher for such payment.

#### **Proceedings for Collection.**

S. 14. It shall be the duty of the attorney general to appear for and in behalf of the state treasurer, and institute proceedings in the proper forum for the enforcement of the provisions of this act, whenever, from information by the state treasurer, or from any probate judge, or otherwise obtained, he shall have reason to believe any of the taxes provided for herein have become past due. And when requested in writing by any probate judge, he shall assist in the adjustment and collection of any such taxes which shall have accrued under this act; and whenever, in the judgment of the attorney general, it becomes necessary and expedient he shall have the power to appoint attorneys to assist him in any of the duties herein required of him, and the compensation of such attorneys shall be two per cent of all amounts actually collected, except where there may be litigation over past due taxes, in which event the compensation shall be five per cent of all amounts actually recovered, said compensation to be deducted from the amount of taxes so collected. *Provided*, that any attorney appointed hereunder shall be a resident of the Congressional district in which such action for the collection of inheritance tax may be brought or in which the administration of any estate liable therefor may be pending..

#### **Repeal.**

S. 15. That all laws and parts of laws in conflict herewith be and the same are hereby repealed, and that this act take effect and be in force from and after its passage.

## CALIFORNIA.

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### In General.

California adopted a collateral inheritance tax in 1893 following the old New York law. In 1905 the graduated direct inheritance law was passed, copying the Wisconsin statute except that the exemptions are more liberal.

The statute of 1911 sharply increases existing progressive rates and perfects the administrative features of the law. The exemptions apply to each individual share, not to the estate as a whole. The supreme court of California has decided that the tax is on the excess over the exemption, not, as in many states, on the entire inheritance if it exceeds the exemption.

We are advised by the controller's office that California taxes stock of a California corporation owned by a non-resident. This is the construction of the statute made by superior courts, but the question has not been passed upon by the supreme court. Corporations and individuals delivering or transferring certificates or assets of a non-resident estate are responsible for the tax. It is not the practice to require a complete inventory of a non-resident's estate.

### Constitutional Limitations.

**California Constitution, 1879, a. 13, s. 1.**

S. 1. All property in the state, not exempt under the laws of the United States, shall be taxed in proportion to its value, to be ascertained as provided by law. The word "property" as used in this article and section, is hereby declared to include moneys, credits, bonds, stocks, dues, franchises and all other matters and things, real, personal and mixed, capable of private ownership; provided, that growing crops, property used exclusively for public schools and such as may belong to the United States, this state, or to any county or municipal corporation within this state, shall be exempt from taxation. The legislature may provide, except in case of credits secured by mortgage or trust deed, for a reduction from credits of debts due *bona fide* residents of this state.

[California Constitution, 1879, was amended November 6, 1894, by including in the exemptions free libraries and free museums and was amended November 6, 1900, by including buildings used for religious worship.]

### List of Statutes.

1850-53. Compiled Laws of California (Garfield & Snyder), c. 127, a. 5.

1893. Statutes of California, c. 168, p. 193.

1895. " " " c. 28, p. 33.

1897. " " " c. 83, p. 77.

1899. " " " c. 85, p. 101.

1903. " " " c. 152, p. 55.

1903. " " " c. 228, p. 268.

1905. " " " c. 314, p. 341.

1905. " " " c. 85, p. 83.

1905. " " " c. 325, p. 374.

1909. " " " c. 337, p. 557.

1911. " " " c. 394 and 395.

General Laws of California, 1903, p. 1356. (This is the Act of 1893, p. 193.)

General Laws of California (Henning), Vol. 5, p. 138. (This is the Statute of 1905, p. 341.)

### The Alien Tax Statute of 1853.

Compiled Laws of California, 1853, c. 127, a. 5, ss. 1, 2, 3, p. 678.

S. 1. Each and every person not being a *bona fide* resident of this state and not being a citizen of the United States, who shall be entitled, whether as heir, legatee or donee, to the whole or any part of the succession of a person deceased, whether such person shall have died in this state or otherwise, shall pay a tax of ten per centum; and all other persons entitled as heir, legatee, or donee to succession property two and one-half per centum on all sums, or the value of all property, which he may actually receive from said succession, or so much thereof as is situated in this state, after deducting debts due by said succession; when the said inheritance, donation or legacy, consists of specific property and the same has not been sold, the appraisement thereof in the inventory shall be considered as the value of the property. The amount shall be paid to the treasurer of the county in which such heir, legatee or donee may reside at the time of receipt of the inheritance, donation or legacy, within thirty days from the receipt thereof, for state purposes; and any person receiving such inheritance, donation or legacy, and neglecting to pay the percentage herein provided within the said thirty days shall be liable to pay double the amount of said percentage, with costs of suit.

[Sections 2 and 3 relate to the collection of the tax.]

### THE COLLATERAL INHERITANCE ACT OF 1893.

Cal. St. 1893, c. 168. Approved March 23, 1893.

AN ACT TO ESTABLISH A TAX ON COLLATERAL INHERITANCES, BEQUESTS AND DEVICES, TO PROVIDE FOR ITS COLLECTION AND TO DIRECT THE DISPOSITION OF THE PROCEEDS.

#### Title.—Void as to Illegitimate Children.

The title of the statute limits the act to collaterals, and illegitimate children are clearly not collateral heirs and therefore the act is void as to them. The act expressly exempts from the opera-

tion of the tax any child or children adopted in conformity with the laws of the state of California, and the court says that whether or not illegitimate, children acknowledged in accordance with California Civil Code, section 1387, are expressly excepted from the tax; that they are not collateral heirs and any inheritance passing to such child from its father is not a collateral inheritance. *Wirringer v. Morgan*, 12 Cal. App. 26, 106 P. 425.

S. 1. After the passage of this act, all property which shall pass, by will or by the intestate laws of this state, from any person who may die seized or possessed of the same while a resident of this state, or if such decedent was not a resident of this state at the time of death, which property, or any part thereof, shall be within this state, or any interest therein or income therefrom which shall be transferred by deed, grant, sale or gift, made in contemplation of the death of the grantor or bargainor, or intended to take effect in possession or enjoyment after such death, to any person or persons, or to any body politic or corporate, in trust or otherwise, or by reason whereof any person or body politic or corporate shall become beneficially entitled, in possession or expectancy, to any property, or to the income thereof, other than to or for the use of his or her father, mother, husband, wife, lawful issue, brother, sister, the wife or widow of a son, or the husband of a daughter, or any child or children adopted as such in conformity with the laws of the state of California, and any lineal descendant of such decedent born in lawful wedlock, or the societies, corporations and institutions now exempted by law from taxation, by reason whereof any such person or corporation shall become beneficially entitled, in possession or expectancy, to any such property, or to the income thereof, shall be and is subject to a tax of five dollars on every hundred dollars of the market value of such property and at a proportionate rate for any less amount, to be paid to the treasurer of the proper county, as hereinafter defined, for the use of the state; and all administrators, executors and trustees shall be liable for any and all such taxes until the same shall have been paid, as hereinafter directed; provided, that an estate which may be valued at a less sum than five hundred dollars shall not be subject to such duty or tax.

### Validity.

This statute is not unconstitutional as depriving an heir of property without due process of law contrary to the fourteenth amendment of the federal constitution. It is claimed that this amendment requires that the state must provide the means of ascertaining the amount of the tax and for notice and appraisal and that the state has no power to take private property until these things are done. But the act did provide for notice. The court holds that the fact that the inheritance tax law vests a tax in the state at once on the death of the decedent is immaterial, as the right though vested is still as to actual collection subject to the appraisal provided by the statute. *Trippel v. State*, 149 Cal. 521, 86 P. 1084, 8 L. R. A. (N. S.) 1210.

A distinction in the statute between the surviving brothers and sisters of the testator and the children of deceased brothers and sisters is valid although the inheritance law of the state provides that in case of intestacy the estate should in certain instances go equally to the brothers and sisters of the decedent and to the children of any deceased brother or sister by right of representation. There is no necessary connection between inheritance and taxation and in making laws relating to these two subjects the legislature is not required to consider them together. In determining the mode in which the estate of an intestate shall be distributed the legislature did not in any respect impair its right to distribute the burdens of taxation or to determine the classes by which that burden shall be borne.

"The right of inheritance including the designation of heirs and the proportions which the several heirs shall receive, as well as the right of testamentary disposition, are entirely matters of statutory enactment and within the control of the legislature. As it is only by virtue of the statute that the heir is entitled to receive any of his ancestor's estate, or that the ancestor can divert his estate from the heir, the same authority which confers this privilege may attach to it the condition that a portion of the estate so received shall be contributed to the state and the portion thus to be contributed is peculiarly within the legislative discretion." *Per* Harrison, J., in *In re Wilmerding's Estate*, 117 Cal. 281, 49 P. 181.

**"Child Adopted." — "Lineal Descendant."**

A child of an adopted child is exempt under these provisions, as he takes by inheritance as issue of the adopted father. *Estate of Winchester*, 140 Cal. 468, 74 P. 10.

**Exemption of "Estates" of Less than \$500.**

The "estates" exempted as under \$500 are not the estates of the decedents but estates taken by inheritance or devise. *In re Wilmerding's Estate*, 117 Cal. 281, 49 P. 181.

An exemption under this statute of the estates taken by inheritance valued at less than \$500 is constitutional. "As this tax is not upon property, but upon the right of succession, the constitutional provision that all property shall be taxed according to its value is inapplicable. The right of the legislature to impose an excise tax includes the right to select the subjects upon which it shall be imposed." There is no constitutional requirement that it

shall be imposed upon every inheritance and the judgment of the legislature in that respect is not open to review by the courts. It may have considered that the expense of valuation of an estate less than \$500 rendered the exemption wise. *In re Wilmerding's Estate*, 117 Cal. 281, 49 P. 181.

S. 2. When any grant, gift, legacy or succession upon which a tax is imposed by section one of this act shall be an estate, income or interest for a term of years or for life, or determinable upon any future or contingent event, or shall be a remainder, reversion or other expectancy, real or personal, the entire property or fund by which such estate, income or interest is supported, or of which it is a part, shall be appraised, immediately after the death of the decedent, at what was the market value thereof at the time of the death of the decedent, in the manner hereinafter provided; and the superior court in which the probate proceedings are pending shall thereupon assess and determine the value of the estate, income, or interest subject to said tax, in the manner recorded in section thirteen of this act, and the tax prescribed by this act shall be immediately due and payable to the treasurer of the proper county and, together with the interest thereon, shall be and remain a lien on said property until the same is paid; provided, that the person or persons, or body politic or corporate, beneficially interested in the property chargeable with said tax, may elect not to pay the same until they shall come into the actual possession or enjoyment of such property, and in that case such person or persons, or body politic or corporate, shall execute a bond to the people of the state of California, in a penalty of twice the amount of the tax arising upon personal estate, with such sureties as the said superior court may approve, conditioned for the payment of said tax and interest thereon, at such time or period as they or their representatives may come into the actual possession or enjoyment of such property, which bond shall be filed in the office of the county clerk of the proper county; provided further, that such person shall make a full and verified return of such property to said court, and file the same in the office of the county clerk within one year from the death of the decedent and within that period enter into such security and renew the same every five years.

S. 3 provides a tax on gifts to executors or trustees in excess of a reasonable compensation.

S. 4 provides that taxes imposed shall be due at the death of the decedent with interest payable from eighteen months after that time at the rate of ten per cent, and with a discount of five per cent on taxes paid within six months from the death of the decedent; and that if the executors, administrators or trustees do not pay such tax within eighteen months of the death of the decedent they shall be required to give a bond for the payment of the tax and interest.

S. 5 provides that where it is impossible to settle an estate within eighteen months, the interest charged shall be seven per cent and not ten per cent after that time.

S. 6 provides that the administrator, executor or trustee shall collect the tax.

S. 7 gives the executor, administrator or trustee power to sell property to pay the tax.

S. 8 covers payment and receipts for the tax.

S. 9 provides for a refund to the beneficiary where debts are proven against the estate after distribution.

S. 10 makes a corporation liable for transfer of stock standing in the name of a foreign executor or administrator.

Ss. 11 and 12 provide for the appraisal of the property.

Ss. 13 and 14 cover the jurisdiction and duty of the court.

### **Moot Questions not Decided.**

Where a plaintiff seeks to obtain a determination that the state has no right to any tax the court will not adjudicate whether there remains a legal method of collecting the tax, as this is a matter which will be decided when the state seeks to enforce its right. *Trippet v. State*, 149 Cal. 521, 86 P. 1084, 8 L. R. A. (N. S.) 1210.

### **Appeal the Sole Remedy.**

Appeal lies from the order of the superior court directing the payment of an inheritance tax under the act of 1893 and therefore the party aggrieved cannot maintain a writ of prohibition to enjoin the court from making the order. *Cross v. Superior Court* (Cal. 1905), 83 P. 815.

Ss. 15-21 provide the duties of the treasurer and other state officers in relation to the collection of the tax.

Section 20, as to the fees of the treasurer for the collection of inheritance taxes, has been so modified by the county government acts of 1893 and 1897, that the provisions allowing the treasurer to keep the money for his own purposes have been repealed. The court finds, however, that section 20 was not wholly repealed but was modified so that thereafter the fees returned were not for the use of the treasurer as an individual. The money should be paid over by the treasurer to the county, as it is legally in the custody of the county until paid over to the state. The county government acts were the statute of 1893, p. 507, and the statute of 1897, p. 573. *San Diego v. Schwartz*, 145 Cal. 49.

S. 22 provides that the tax levied and collected under the act shall be paid into the treasurer of the state for the uses of "the State School Fund."

### **The Amendment of 1895.**

Cal. St. 1895, c. 28, p. 33, was approved and went into effect March 9, 1895, and made verbal changes in Cal. St. 1893, c. 168, s. 2. The act of 1895 also amended ss. 6, 11, 15, 17 and 18 of Cal. St. 1893, c. 168.

**The Act of 1897.**

Cal. St. 1897, c. 83, p. 77, was approved and went into effect March 9, 1897.

S. 1. Section one of an act entitled "An Act to establish a tax on collateral inheritances, bequests and devises, to provide for its collection and to direct the disposition of the proceeds," approved March twenty-third, eighteen hundred and ninety-three, is hereby amended so as to read as follows: —

S. 1. After the passage of this act, all property which shall pass, by will or by the intestate laws of this state, from any person who may die seized or possessed of the same while a resident of this state, or if such decedent was not a resident of this state at the time of death, which property, or any part thereof, shall be within this state, or any interest therein or income therefrom, which shall be transferred by deed, grant, sale or gift, made in contemplation of the death of the grantor or bargainor, or intended to take effect in possession or enjoyment after such death, to any person or persons, or to any body politic or corporate, in trust or otherwise, or by reason whereof any person or body politic or corporate shall become beneficially entitled, in possession or expectancy, to any property, or to the income thereof, other than to or for the use of his or her father, mother, husband, wife, lawful issue, brother, sister and niece or nephew when a resident of this state, the wife or widow of a son, or the husband of a daughter, or any child or children adopted as such in conformity with the laws of the state of California, and any lineal descendant of such decedent born in lawful wedlock, or the societies, corporations and institutions now exempted by law from taxation, or to any public corporation, or to any society, corporation, institution or association of persons engaged in or devoted to any charitable, benevolent, educational, public or other like work (pecuniary profit not being its object or purpose), or to any person, society, corporation, institution or association of persons in trust for or to be devoted to any charitable, benevolent, educational or public purpose, by reason whereof any such person or corporation shall become beneficially entitled, in possession or expectancy, to any such property or to the income thereof, shall be and is subject to a tax of five dollars on every hundred dollars of the market value of such property and at a proportionate rate for any less amount to be paid to the treasurer of the proper county, as hereinafter defined, for the use of the state; and all administrators, executors and trustees shall be liable for any and all such taxes until the same shall have been paid, as hereinafter directed; provided, that an estate which may be valued at a less sum than five hundred dollars shall not be subject to such duty or tax.

S. 2. The exemptions contained in this act shall apply to all property which has passed, by will, succession or transfer, since the approval of the act of which this act is amendatory, except in those cases where the tax has been paid to the treasurer of the proper county.

**Void as Retroactive.**

The clauses which extend the exemptions of the existing law and provide that the exemptions shall apply to all cases where taxes have not been paid under existing law, are void as in violation of the constitution which provides that the legislature shall not make



any gift or donation of any public money or thing of value. Under the act of 1893 the inheritance tax became the property of the state on the death of the decedent. *In re Stanford's Estate*, 126 Cal. 112, 58 P. 462, 45 L. R. A. 788.

### **Void as a Local Law.**

Section 2 may be void as in violation of the provision of the California constitution that the legislature shall not pass local or special laws releasing persons from their debts or obligations to the state, as although this was neither a local nor a special law in form still it is opposed to the intent of the constitution. *In re Stanford's Estate*, 126 Cal. 112, 58 P. 462, 45 L. R. A. 788.

### **Validity of Exemption to Resident Nieces and Nephews.**

The California statute as amended by the statute of 1897, exempting nephews and nieces when residents of the state is not void under the United States constitution. On the contrary, the effect of the United States constitution is to extend the exemption there given to citizens of other states, as the effect of the federal constitution is to measure the exemption by the exemption given to citizens of California. The court notes the case of *In re Mahoney*, 133 Cal. 180, 65 P. 389, 85 Am. St. Rep. 155, and says that the question was raised there by aliens and that therefore no constitutional question was involved, and the decision in the Mahoney case was a dictum which the court refuses to follow in *In re Johnson*, 139 Cal. 532, 534, apparently overruling *In re Stanford's Estate*, 54 P. 259, which was itself reversed on another point in 126 Cal. 112, 58 P. 462, 45 L. R. A. 788.

### **The Amendment of 1899.**

Cal. St. 1899, c. 85, p. 101, became effective without the governor's approval, March 14, 1899. It amended the statute of 1897 by omitting from the exempt class a brother or sister of the decedent or niece or nephew when non-resident of California. Otherwise section 1 of Cal. St. 1897, c. 83, p. 77, is repeated in the act of 1899.

Section 2 of the act of 1897 is repeated verbatim by Cal. St. 1899.

### **Classification by Relationship Valid.**

The California statute of 1893 as amended in 1899 was attacked on the ground that it was in violation of the fourteenth amendment.

It was argued that the fourteenth amendment compels the state in levying inheritance taxes to conform to blood relationship. The court holds, however, that the inheritance tax involves the exercise of the legislative discretion and judgment with which the fourteenth amendment did not interfere, and that it is not arbitrary to put in one class for the purpose of inheritance all blood relatives to a designated degree except brothers and sisters, and to place all other and more remote relatives including brothers and sisters in a second class along with strangers to the blood. *Campbell v. California*, 200 U. S. 87, 95, 26 S. Ct. 182, 50 L. Ed. 382.

### **The Amendments of 1903.**

Cal. St. 1903, c. 228, p. 268, was approved March 20, 1903. It amended the act of 1899 as follows:—

It adds to the statute of 1899 an exemption after the provision as to adopted children "or to any person to whom deceased for not less than ten years prior to death, stood in the mutually acknowledged relation of a parent"; and adds also to the same exemption "any lineal ancestor."

Section 2 is a copy of section 2 of Cal. St. 1899.

Cal. St. 1903, c. 52, p. 55, approved February 27, 1903, added a new section numbered 20½, providing for the employment of special attorneys for the collection of the tax.

### **THE INHERITANCE TAX ACT OF 1905.**

**Sta. of 1905, c. 314.** Approved March 20, 1905.

AN ACT TO ESTABLISH A TAX ON GIFTS, LEGACIES, INHERITANCES, BEQUESTS, DEVISES, SUCCESSIONS AND TRANSFERS, to provide for its collection, and to direct the disposition of its proceeds; to provide for the enforcement of liens created by this act and for suits to quiet title against claims of lien arising hereunder; to repeal an act entitled "An Act to establish a tax on collateral inheritances, bequests and devises, to provide for the collection and to direct the disposition of its proceeds," approved March 23, 1893, and all amendments thereto and all acts and parts of acts in conflict with this act.

#### **Property Subject to Inheritance or Transfer Tax. — Lien on Property.**

S. 1. All property which shall pass, by will or by the intestate laws of this state, from any person who may die seized or possessed of the same while a resident of this state, or if such decedent was not a resident of this state at the time of death, which property, or any part thereof, shall be within this state, or any interest therein, or income therefrom, which shall be transferred by deed, grant, sale, or gift, made in contemplation of the death of the grantor, vendor or bargainor, or intended to take effect in possession or enjoyment after such death, to any person or persons, or to any body politic or corporate, in trust or otherwise,

or by reason whereof any person or body politic or corporate shall become beneficially entitled, in possession or expectancy, to any property, or to the income thereof, shall be and is subject to a tax hereinafter provided for, to be paid to the treasurer of the proper county, as hereinafter directed, for the use of the state; and such tax shall be and remain a lien upon the property passed or transferred until paid and the person to whom the property passes or is transferred and all administrators, executors and trustees of every estate so transferred or passed shall be liable for any and all such taxes until the same shall have been paid as hereinafter directed. The tax so imposed shall be upon the market value of such property at the rates hereinafter prescribed and only upon the excess over the exemptions hereinafter granted.

Whenever any person or corporation shall exercise a power of appointment derived from any disposition of property made either before or after the passage of this act, such appointment when made shall be deemed a transfer taxable under the provisions of this act in the same manner as though the property to which such appointment relates belonged absolutely to the donee of such power and had been bequeathed or devised by such donee by will; and whenever any person or corporation possessing such power of appointment so derived shall omit or fail to exercise the same within the time provided therefor, in whole or in part, a transfer taxable under the provisions of this act shall be deemed to take place to the extent of such omissions or failure, in the same manner as though the persons or corporations thereby becoming entitled to the possession or enjoyment of the property to which such power related had succeeded thereto by a will of the donee of the power failing to exercise such power, taking effect at the time of such omission or failure.

### **Nature of Tax.**

The collateral inheritance tax is not a tax on property as such, but one upon the right of succession — a tax for the privilege of succeeding to property. *In re Kennedy*, 157 Cal. 517, 108 P. 280.

### **Whether Discriminating Against Non-Residents.**

The contention that the California statute of 1905, c. 314, is unconstitutional as discriminating between the citizens of the state and those of other states, will not be considered where it does not appear by the pleadings to which class the appellant belongs. *In re Damon*, 10 Cal. App. 542, 102 P. 684.

### **"All Property Which Shall Pass by Will or by the Intestate Laws."**

*Homestead.* — It was claimed that this language included property set apart to the widow as a homestead. The court finds, however, that where the power of setting apart as a homestead is exercised by the probate court, the devisee and

legatees take no beneficial interest whatever. The probate court may even set apart as a homestead real property specifically devised by a will and thus defeat the devise. Where it is so set apart as a homestead the title of the person to whom it is so set apart is in no way derived by will, but comes solely from the homestead order.

It is clear, therefore, that what the widow takes under this order of the probate court she does not take by will or by the intestate laws of the state. The language "pass by will or by the intestate laws of this state" means to pass by virtue and force of the law of this state governing testate or intestate succession. It was claimed that the property of the testator passed to the devisees and that subsequently by an order of the probate court the homestead was carved out of it.

The court replies that the right to any tax imposed vested in the state at the moment of death and could not be legally divested by any department of the state, but that the right so vested to the tax imposed by the act; and when it is determined that the act imposed no tax as to property lawfully diverted by the court in probate with the consequence that it could never be distributed to the devisee, legatee or heir, it is apparent that no vested right of the state is impaired. Therefore, the inheritance tax cannot be assessed on such property. The fact that the wife to whom the homestead is set apart is also a devisee and legatee is of no consequence in determining whether the right of the state to the tax includes property set apart as homestead. *In re Kennedy*, 157 Cal. 517, 108 P. 280.

*Community Property.*—The surviving wife's share of community property is subject to the inheritance tax. The inheritance tax statute was passed presumably in view of the California decisions that the wife took her share of the community property upon the death of her husband by succession as his heir. *In re Moffitt's Estate*, 153 Cal. 359, 95 P. 653; *In re Sim's Estate*, 153 Cal. 365, 95 P. 655; *People v. Lebus* (Cal. 1908), 96 P. 1118.

It was claimed on the question of a tax on the surviving wife's share of the property, that the property was acquired under the California constitution of 1849 and that therefore the wife acquired a vested right in the community property, which was protected by the federal constitution.

The court finds, however, that the declaration in the constitution of 1849, that "laws shall be passed more clearly defining the rights

of a wife in relation as well to her separate property as to that held in common with her husband" amounts to no more than a mandate to the legislature to define and prescribe the rights of the wife in the property of the community. It was the design of the constitution of 1849 to preserve so far as might be the rights to the community property which wives had enjoyed. But even under the Spanish law the wife had no vested estate in the community property, but it was a mere expectancy so long as the community existed.

The court finds, therefore, that the California inheritance tax law is not in violation of the federal constitution on the ground that it takes away a vested interest. *In re Moffitt*, 153 Cal. 359, 95 P. 1025, affirming on rehearing 95 P. 653, deciding the question as to the federal constitution, which was not considered in the original opinion.

### **"Market Value."**

*Quare*, whether the homestead, family allowance, expenses of administration and debts of decedent should be excluded from the value of the estate. *Becker v. Nye* (Cal. 1908), 96 P. 333.

**Where the executor misappropriates** the funds of the estate the ensuing loss is not to be deducted in reckoning the value of the estate for the purpose of the inheritance tax under the California statute of 1905, c. 314. The court observes that all charges at the death of the testator should be deducted, but that the misappropriation by the executor happened after the death of the testator and should therefore not be deducted, as subsequent increase or decrease in the value of the estate is immaterial. *In re Hite*, 159 Cal. (1911) 392, 113 P. 1072

### **Property not in Excess of \$25,000 in Value. — Classification of Relationship. — Primary Rates of Taxation.**

S. 2. When the property or any beneficial interest therein so passed or transferred exceeds in value the exemption hereinafter specified and shall not exceed in value twenty-five thousand dollars the tax hereby imposed shall be: —

(1) Where the person or persons entitled to any beneficial interest in such property shall be the husband, wife, lineal issue, lineal ancestor of the decedent or any child adopted as such in conformity with the laws of this state, or any child to whom such decedent for not less than ten years prior to such transfer stood in the mutually acknowledged relation of a parent, *provided, however*, such relationship began at or before the child's fifteenth birthday, and was continuous for said ten years thereafter, or any lineal issue of such adopted or mutually acknowledged child, at the rate of one per centum of the clear value of such interest in such property.

(2) Where the person or persons entitled to any beneficial interest in such property shall be the brother or sister or a descendant of a brother or sister of the decedent, a wife or widow of a son, or the husband of a daughter of the decedent, at the rate of one and one-half per centum of the clear value of such interest in such property.

(3) Where the person or persons entitled to any beneficial interest in such property shall be the brother or sister of the father or mother or a descendant of a brother or sister of the father or mother of the decedent, at the rate of three per centum of the clear value of such interest in such property.

(4) Where the person or persons entitled to any beneficial interests in such property shall be the brother or sister of the grandfather or grandmother or a descendant of the brother or sister of the grandfather or grandmother of the decedent, at the rate of four per centum of the clear value of such interest in such property.

(5) Where the person or persons entitled to any beneficial interest in such property shall be in any other degree of collateral consanguinity than is hereinbefore stated, or shall be a stranger in blood to the decedent, or shall be a body politic or corporate, at the rate of five per centum of the clear value of such interest in such property.

#### **Classification of Values in Excess of \$25,000. — Rates of Taxation.**

S. 3. The foregoing rates in section two are for convenience termed the primary rates. When the market value of such property or interest exceeds twenty-five thousand dollars, the rates of tax upon such excess shall be as follows: —

(1) Upon all in excess of \$25,000 and up to \$50,000, one and one half times the primary rates.

(2) Upon all in excess of \$50,000 and up to \$100,000, two times the primary rates.

(3) Upon all in excess of \$100,000 and up to \$500,000, two and one-half times the primary rates.

(4) Upon all in excess of \$500,000, three times the primary rates.

#### **Exemptions.**

S. 4. The following exemptions from the tax are hereby allowed: —

(1) All property transferred to societies, corporations and institutions now or hereafter exempted by law from taxation or to any public corporation or to any society, corporation, institution or association of persons engaged in or devoted to any charitable, benevolent, educational, public, or other like work (pecuniary profit not being its object or purpose), or to any person, society, corporation, institution or association of persons in trust for or to be devoted to any charitable, benevolent, educational or public purpose, by reason whereof any such person or corporation shall become beneficially entitled, in possession or expectancy, to any such property or to the income thereof shall be exempt.

(2) Property of the clear value of ten thousand (\$10,000.00) dollars transferred to the widow or to a minor child of the decedent, and of four thousand (\$4,000.00) dollars transferred to each of the other persons described in the first subdivision of section two shall be exempt.

(3) Property of the clear value of two thousand (\$2,000.00) dollars transferred to each of the persons described in the second subdivision of section two shall be exempt.

(4) Property of the clear value of one thousand five hundred (\$1,500.00) dollars transferred to each of the persons described in the third subdivision of section two shall be exempt.

(5) Property of the clear value of one thousand (\$1,000.00) dollars transferred to each of the persons described in the fourth subdivision of section two shall be exempt.

(6) Property of the clear value of five hundred (\$500.00) dollars transferred to each of the persons and corporations described in the fifth subdivision of section two shall be exempt.

"Exemption is a matter of grace on the part of the legislature and cannot be claimed beyond the extent to which a law-making body has seen fit to allow it." *In re Timken's Estate*, 158 Cal. 51, 109 P. 608.

### **Construction.**

It was claimed that the rule of strict construction should apply to an inheritance tax exemption, but the court holds that this rule extends to exemptions as well as impositions and that a strict construction should be indulged against a rule of exemption both unequal and unjust. *In re Bull's Estate*, 153 Cal. 715, 96 P. 366.

### **Computing Tax and Exemptions.**

The court holds that if the estate is over \$25,000 the statute does not mean that the first \$25,000 is exempt but that the "primary rates" were to be computed in all cases and that the tax is not merely upon the excess over \$25,000. *In re Bull's Estate*, 153 Cal. 715, 96 P. 366, followed in *In re Timken's Estate*, 158 Cal. 51, 106 P. 608.

Sections 1 to 4 providing for an ascending scale of rates and exemptions necessitate a deduction of the exemption from the first \$25,000 in each distributive share instead of from the distributive share as a whole. The entire amount of each share whether exempt or not is considered for the purpose of fixing the rate of taxation. The exemption is to be deducted from the first \$25,000 and the tax fixed on that first \$25,000 less the exemptions. *In re Timken's Estate*, 158 Cal. 51, 109 P. 608.

### **The Rule for Deduction of Exemptions.**

Under date of January, 1908, the controller's office issued a circular, No. 105, dealing with the subject of the method to be

followed in deducting exemptions in figuring inheritance taxes. At that time the question had not been passed on by the higher courts, but subsequently the supreme court, in *Estate of Bull* (153 Cal. 715), announced the principle.

The following is the more important portion of the circular referred to:—

“Some confusion has arisen in the computation of inheritance taxes, principally in connection with the figuring of exemptions when inheritances exceed in amount \$25,000. There should be no difficulty if there is kept in mind the invariable rule that the deduction of the exemption, whatever it may amount to, is to be made from the first \$25,000 in value of the inheritance. Thus, if the property passing to an heir or legatee is worth \$30,000, and the exemption is \$4,000—the latter sum should be deducted from the first \$25,000, which will leave \$21,000 taxable at the primary rate. Then the tax on the remaining \$5,000 is computed at the next higher rate, and, of course, the sum of the taxes on the \$21,000 and on the \$5,000 is the total of the taxes to be paid. The mistake into which many persons would fall in this instance would be that of computing the tax on the whole of the first \$25,000 at the primary rate, and then deducting the \$4,000 exemption from the remaining \$5,000. These two methods of computation bring different results. Assuming that in the above example the primary rate was 1 per cent, as it would be if the person receiving the inheritance were a son or daughter, the tax would be \$285 by the first method of computation and \$265 by the second.

To take another example we will suppose that upon his death A leaves to B, his minor son, a bequest amounting to \$60,000. In this instance the primary rate is 1 per cent and the exemption is \$10,000. Therefore, in computing the tax the calculation will be made as follows:—

Total amount of bequest .....	\$60,000	
Exemption is taken from first .....	\$25,000	
Amount of exemption .....	10,000	
	<hr/>	
Excess taxable at primary rate .....	\$15,000	
	<hr/>	
Amounts taxable rates and sum of taxes as follows —		
At 1 per cent.....	\$15,000	Tax \$150
At 1½ per cent.....	25,000	“ 375
At 2 per cent.....	10,000	“ 200
	<hr/>	<hr/>
Total amount taxed .....	\$50,000	
Exemption as above .....	10,000	
	<hr/>	<hr/>
	\$60,000	\$725

If, in this instance, the computation had been made by figuring the first \$25,000 all at 1 per cent, and the second \$25,000 at 1½ per cent, and exempting the last \$10,000, the total of the tax would have been only \$625, or \$100 less than the correct amount.

The equitable reason for the rule adopted is that it operates uniformly by making the exemptions of equal value to all persons within any one of the several



classifications enumerated in the statute. It can be easily shown that to deduct exemptions from the total value of inheritances, instead of from the first \$25,000, would be to favor the persons receiving large inheritances by making the exemptions of greater value to them than to heirs receiving less amounts. Assume, for example, that there are three estates, valued at \$30,000, \$60,000 and \$120,000, respectively. Assume, also, that in each instance the entire estate, less tax, goes to the widow. If, then, the \$10,000 exemption be taken from the first \$25,000, the value of such exemption, at 1 per cent tax rate, will be \$100 in each instance. On the other hand, if the last \$10,000 should be exempted in each case the value of the exemptions would be: In the first estate, with \$5,000 exempted at 1 per cent and \$5,000 at  $1\frac{1}{2}$ , the value of exemption would be \$125; in the second estate, with \$10,000 exempted at 2 per cent, value of exemption would be \$200; in third estate, with \$10,000 exempted at  $2\frac{1}{2}$  per cent, exemption would be worth \$250."

Sections 5 to 29 cover the assessment and collection of the tax. Sections which have been construed are as follows:—

**Administrators to Deduct Amount of Tax.**

S. 9. Any administrator, executor or trustee having in charge or trust any legacy or property for distribution, subject to the said tax, shall deduct the tax therefrom, or if the legacy or property be not money he shall collect the tax thereon upon the market value thereof, from the legatee or person entitled to such property and he shall not deliver, or be compelled to deliver any specific legacy or property subject to tax to any person until he shall have collected the tax thereon; and whenever any such legacy shall be charged upon or payable out of real estate, the executor, administrator or trustee shall collect said tax from the distributee thereof, and the same shall remain a charge on such real estate until paid; if however, such legacy be given in money to any person for a limited period, the executor, administrator or trustee shall retain the tax upon the whole amount; but if it be not in money he shall make application to the superior court to make an apportionment, if the case require it, of the sum to be paid into his hands by such legatees, and for such further order relative thereto as the case may require.

**Where a decree of distribution orders a deduction only of "the amount of the inheritance tax as required by law" and does not fix the amount of such tax nor expressly adjudicate that any tax should be deducted, but leaves the matter dependent upon whether or not the law requires any inheritance tax, the distributees are entitled to the entire residue of the estate under that decree where no inheritance tax could be collected.** *Wirringer v. Morgan*, 12 Cal. App. 26, 106 P. 425.

**Tax to be Paid to County Treasurer. — Receipt Must be Countersigned by State Controller.**

S. 11. Every sum of money retained by an executor, administrator or trustee, or paid into his hands, for any tax on property, shall be paid by him, within thirty

days thereafter, to the treasurer of the county in which the probate proceedings are pending, and the said treasurer shall give, and every executor, administrator, or trustee shall take, duplicate receipts for such payment, one of which receipts said executor, administrator or trustee shall immediately send to the controller of the state, whose duty it shall be to charge the treasurer so receiving the tax with the amount thereof, and said controller shall seal said receipt with the seal of his office and countersign the same and return it to the executor, administrator or trustee, whereupon it shall be a proper voucher in the settlement of his accounts; and an executor, administrator or trustee shall not be entitled to credits in his accounts, nor be discharged from liability for such tax, nor shall said estate be distributed, unless he shall produce a receipt so sealed and countersigned by the controller, or a copy thereof, certified by him, and file the same with the court.

The provision that the controller shall countersign the receipts for payment of taxes gives him no authority to revise the amount of the tax as found by the court. In countersigning a receipt he decides nothing, nor should the receipt be so framed as to bind the state or conclude its right to have the question reviewed on appeal. The receipt should be only for so much money on account of the tax. *Becker v. Nye* (Cal. 1908), 96 P. 333.

The provision of section 8 of the act of 1893 that the estate shall not be distributed until the administrator produces a receipt showing that a tax has been paid is also found in section 11 of the repealing act of 1905. This provision is therefore simply continued in force by the act of 1905 and therefore the estate of one who died before the repealing act was passed cannot be distributed until the tax is paid. The repealing act could not renounce the vested right of the state to the inheritance tax. *In re Lander* (Cal. 1907), 93 P. 202.

### **When Value of Inheritance or Bequest is Uncertain. — Appraisal. — Expense of Same.**

S. 14. When the value of any inheritance, devise, bequest or other interest subject to the payment of said tax is uncertain, the superior court in which the probate proceedings are pending, on the application of any interested party or upon its own motion, shall appoint some competent person as appraiser, as often as and whenever occasion may require, whose duty it shall be forthwith to give such notice, by mail, to all persons known to have or claim an interest in such property and to such persons as the court may by order direct, of the time and place at which he will appraise such property and at such time and place to appraise the same and make a report thereof, in writing, to said court, together with such other facts in relation thereto as said court may by order require to be filed with the clerk of said court; and from this report the said court shall, by order, forthwith assess and fix the market value of all inheritances, devises, bequests or other interests and the tax to which the same is liable and shall im-

mediately cause notice thereof to be given, by mail, to all parties known to be interested therein; and the value of every future or contingent or limited estate, income, or interest shall for the purposes of this act, be determined by the rule, method and standards of mortality and of value that are set forth in the actuaries' combined experience tables of mortality for ascertaining the value of policies of life insurance and annuities and for the determination of the liabilities of life insurance companies, save that the rate of interest to be assessed in computing the present value of all future interests and contingencies shall be five per centum per annum; and the insurance commissioner shall, on the application of said court, determine the value of such future or contingent or limited estate, income or interest, upon the facts contained in such report and certify the same to the court, and his certificate shall be conclusive evidence that the method of computation adopted therein is correct. The said appraiser shall be paid by the county treasurer out of any funds that he may have in his hands on account of said tax, on presentation of a sworn itemized account and on the certificate of the court, at the rate of five dollars per day for every day actually and necessarily employed in said appraisal, together with his actual and necessary traveling expenses.

The court refers to the fact that the practice as to appraisal throughout the state has not been uniform, some judges taking the inventory and appraisal as the basis, while others cause an appraisal to be made under the inheritance tax law, and still others resort to both methods. The act of 1905, section 5, provides for the ascertainment of the value of life estates and future estates by the appraiser to be appointed by the court, and the court of appeals expresses the opinion that it would be better to appoint appraisers in all cases. *Becker v. Nye* (Cal. 1908), 96 P. 333. (See the recent Statute of 1911, c. 394.)

### **Superior Court to have Jurisdiction.**

S. 16. The superior court in the county in which is situate the real property of a decedent who was not a resident of the state, or if there be no real property, then in the county in which any of the personal property of such non-resident is situate, or in the county of which the decedent was a resident at the time of his death, shall have jurisdiction to hear and determine all questions in relation to the tax arising under the provisions of this act, and the court first acquiring jurisdiction hereunder shall retain the same, to the exclusion of every other.

This section gives the superior court jurisdiction as to appraisal and the judgment of the court on this matter is conclusive, subject only to be reviewed on appeal. The state as an interested party may appeal from the decision. *Becker v. Nye* (Cal. 1908), 96 P. 333.

**OPINION OF THE ATTORNEY GENERAL IN REGARD TO PRO-  
CEDURE ON CITATION.**

There is reprinted herewith a letter written by Attorney General U. S. Webb under date of March 30, 1908, in response to a request by Mr. Herbert C. Jones, attorney for the county treasurer of Santa Clara County, for an opinion regarding procedure under certain conditions. Mr. Jones' questions were the following: —

"\* \* \* Suppose that all of a decedent's property has passed by deeds made in contemplation of death, in which case there are no probate proceedings; and suppose that the grantees wish to pay the inheritance tax. What is the proper procedure to determine the market value of the taxable property? Is there any provision for the appointment of an appraiser in such a case? If not, is the market value to be fixed by the county treasurer, and are the grantees who pay on the basis so fixed by him and file their receipt as provided in section 24 protected from any subsequent claim by the state that the market value was not correct?"

To these questions the attorney general made reply as follows: —

"Section 1 of the act of 1905 (Stats. 1905, p. 341) provides that the tax shall be assessed against all property passing by deed, grant, sale, or gift, made in contemplation of the death of the grantor, etc.; likewise that the tax shall be assessed against all property passing by "deed, grant, sale, or gift \* \* \* intended to take effect in possession or enjoyment after the death of the grantor," etc.

Your question recognizes these facts, and is directed as to procedure.

Section 17 of the act provides that when it shall appear to the superior court or judge thereof that a tax accrued under the act has not been paid, such judge or court shall cause citation to issue for the parties known to have interest in the property so liable, and further provides the manner of service and the procedure after service.

Section 18 provides that when the county treasurer has reason to believe that any accrued tax is unpaid, he shall notify the district attorney, and that the district attorney so notified "shall prosecute the proceedings in the superior court, as provided in section 17, for the enforcement and collection of this tax."

It would seem, under these sections, not only proper, but also the duty of the district attorney (or the attorney acting instead of the district attorney, as provided by section 23 of the act) to present to the court a petition showing the existence of the facts which bring the matter within the provisions of said sections 17 and 18. That petition, it occurs to me, should show the fact of transfer, with date, etc., the property conveyed, the parties to whom conveyed, and in whom title rests, that such conveyance was made in contemplation of death, or, that such conveyance was "intended to take effect in possession or enjoyment after such death," the name of the person or persons in possession or enjoyment, the fact that the tax has not been paid, and the probable value of the property conveyed. While these are the more essential facts, all other facts should be alleged which would tend to place the court in possession of the exact situation.

After service of the citation and the appearance of the party or parties liable for the tax, the court will have jurisdiction of the person or persons and of the subject-matter, as fully as though it was sought to enforce the payment of the tax from the estate of a deceased person.

Assuming that the grantor in your case was a resident of the state, section 16, so far as applicable to your case, reads: —

"The superior court \* \* \* in the county of which the decedent was a resident at the time of his death, shall have jurisdiction to hear and determine all questions in relation to the tax arising under the *provisions of this act*, and the court first acquiring jurisdiction hereunder shall retain the same, to the exclusion of every other."

I am not overlooking the fact that in the language just quoted the word "decedent" is used, but in section 28 of said act it is provided that: —

"The word 'decedent' as used in this act shall include the testator, intestate, grantor, bargainor, vendor or donor."

Section 14 provides for the appraisement: —

"When the value of any inheritance, devise, bequest or other interest subject to the payment of said tax is uncertain, the superior court in which the probate proceedings are pending \* \* \* shall appoint some competent person as appraiser," etc.

It is true that in the language quoted it is said "the superior court in which the probate proceedings are pending" but this language must be read in conjunction with the language heretofore quoted in section 16.

The primary purpose of section 14 is to fix the manner of appraisements, etc., and not the designation of jurisdiction, while section 16 is the section of the act devoted wholly to the question of jurisdiction. That section, as heretofore quoted, gives to the court jurisdiction "to hear and determine all questions in relation to the tax arising under the provisions of this act."

Where the value of the "interest subject to the payment of said tax is uncertain," a necessity for appraisement exists and appraisement, in my view, is a question in relation to the tax, which the court has ample jurisdiction to determine.

In the foregoing I have assumed that the payment of the tax would be resisted. When the petition has been filed and citation issued, where the person liable for the tax is willing to pay the same, upon the amount being ascertained, upon the filing of the petition the person could immediately appear and the appraisement be speedily made. I entertain no doubt that the payment of the tax ascertained to be due through the proceeding above indicated, in the absence of appeal, would acquit the person so paying of liability under the act and protect him from any claim subsequently made by the state.

This question has not yet reached the appellate courts and I am, therefore, unable to give you decision supporting the views expressed. I trust, however, that you will take the matter up along these lines, and if this office can be of any service to you hereafter, such service will be cheerfully rendered.

### **Repeal of "Collateral Inheritance Tax Law."**

S. 27. An act entitled 'An Act to establish a tax on collateral inheritances, bequests and devises, to provide for its collection, and to direct the disposition of the proceeds,' approved March 23, 1893, and all amendments thereto, and all acts and parts of acts in conflict with this act are hereby expressly repealed.

### **Effect on Taxes Already Due.**

The right of the state to the inheritance tax under the law of 1893 is immediately upon the death of the decedent a vested right

which cannot be surrendered by a legislative act and no amendment or extension can take away this right. So a tax due before the statute of 1905 was passed can be collected after it is passed. *Trippet v. State*, 149 Cal. 521, 86 P. 1084, 8 L. R. A. (N. S.) 1210. *In re Lander* (Cal. 1907), 93 P. 202.

Cal. St. 1905, c. 314, substantially enacted the provisions of the former law respecting the payment and collection of succession taxes and was done with the knowledge of the existence of certain uncollected taxes and with the intent to continue in force a mode and means for their collection. And the court has the authority under this statute to order the executor to deduct from certain legacies the amount of the tax, especially in view of St. 1905, c. 85, to the effect that the court must be satisfied that any inheritance tax has been paid before any decree or distribution of an estate is made. *In re Bowen's Estate* (Cal. 1908), 94 P. 1055.

The court finds that the amendment of 1905 to the California statute did not render the federal question as to the validity of the prior statute a moot question in relation to the estate of one who had died before the statute of 1905 was passed. *Campbell v. California*, 200 U. S. 87, 26 S. Ct. 182, 50 L. Ed. 382.

Where a new law was passed in California in 1905, after a case was taken to the supreme court at Washington repealing the prior statutes without any clause saving the right of the state in respect to charges already approved, the court was asked to reverse the judgment of the California court on the ground that the state no longer had any authority whatever to levy an inheritance tax, but the court holds that it is its duty to decide the federal question and to leave the local question to the supreme court of California. *Campbell v. California*, 200 U. S. 87, 26 S. Ct. 182, 50 L. Ed. 382.

#### **RULES OF PRACTICE OF THE CONTROLLER'S OFFICE UNDER THE ACT OF 1905.**

1. *Form of receipt.* — As it is necessary that the controller's office should keep an intelligible record of payments, it is requested that treasurers' receipts be made out to show date of death, total value of estate, relationship and share of each distributee, exemptions allowed, net tax, interest due if any and total tax. Blank forms of receipts are furnished by this office.

2. *Incorrect computations.* — When receipts presented for countersignature show upon their face a probable error in computation of the tax, they will be returned for fuller information or for correction. In every instance thus far the courts have been found desirous of correcting errors where they have occurred.

3. *Mode of computing tax.* — In computing the tax, and especially in the matter of deducting exemptions from the first \$25,000 in value of the estate, the rule laid down by the supreme court in *Estate of Bull* (153 Cal. 715) should be followed. That rule is more fully explained in the controller's circular (reprinted at p. 000, *ante*).

4. *Court order necessary.* — In cases where there have been no probate proceedings, but an inheritance or transfer tax is due as, for example, when the whole estate has been deeded in contemplation of death, an order fixing the amount payable must be obtained from the superior court.

5. *Increase or decrease of estate.* — Inasmuch as the tax vests at date of death, the appraised value should represent as nearly as possible what the estate was worth at time of decease. Neither subsequent increase in value of the estate nor its diminution should be considered. Rents, interest, and other increments should not be included and no deduction should be made for expense of maintenance or for improvements subsequent to the time the tax vested.

6. *Payment on partial distribution.* — When an order of partial distribution has been made by probate court, payment may be made of that proportionate part of the tax, the usual order fixing the tax due being first obtained.

7. *Insufficient or excessive payment.* — The issue of a treasurer's receipt countersigned by the controller does not release an estate from further payment if subsequently additional property is discovered which was not covered by the order fixing the tax. On the other hand, where the amount of tax paid was in excess of what was actually due under the law, the excess may be recovered.

8. *Method of recovery of excess.* — In order to recover any excess of tax which may have been paid, an order of court should be secured reciting the facts in sufficient detail to make the record intelligible, after which the controller will authorize the county treasurer to repay the amount of the excess out of any inheritance tax funds in his (the treasurer's) hands, and to credit himself with such amount in his next periodical settlement with the state.

9. *Treasurers' commissions and appraisers' fees.* — In computing the commissions to which county treasurers are entitled under section 22 of the Inheritance Tax Act, the words "each year" are construed to mean each fiscal year. This rule is based on an opinion rendered by Attorney General Ford under date of May 24, 1899. Treasurers will credit themselves with the proper amount of commission in each semi-annual settlement with state. Appraisers' fees may be paid any time on order of court out of any inheritance tax money in treasurer's hands, but in settlement with state a copy of each such order must be furnished the controller so that he may credit the treasurer with such payments. The net result of all such transactions will, of course, appear in county auditor's report.

10. When an inheritance or transfer tax has been paid in a case where there is no probate record, but a citation has been issued and order of court made, especially where realty has been transferred, the controller will, on presentation of the receipt of the county treasurer, with a description of the property, certify to such payment of tax, which certificate may be recorded, if so desired.

### Other Acts.

Cal. St. 1905, c. 85, p. 83, approved March 7, 1905, is as follows: —

S. 1. Section 1669 of the Code of Civil Procedure of the state of California is hereby amended to read as follows: —

1860. Before any decree of distribution of an estate is made, the court must be satisfied, by the oath of the executor or administrator, or otherwise, that all state, county and municipal taxes, legally levied upon property of the estate, and any inheritance tax which is due and payable have been fully paid.

Cal. St. 1905, c. 325, p. 374, approved March 20, 1905, provides machinery for the collection of the inheritance tax and also provides that actions may be brought against the estate for the purpose of quieting title to property against the lien or claim of lien of taxes under the inheritance statutes.

Cal. St. 1909, c. 337, p. 557, approved March 20, 1909, provides for the collection of taxes by an inheritance tax deputy.

### THE PRESENT ACT.

Cal. St. 1911, c. 395. Approved April 7, 1911.

AN ACT TO ESTABLISH A TAX ON GIFTS, LEGACIES, INHERITANCES, BEQUESTS, DEVISES, SUCCESSIONS AND TRANSFERS, to provide for its collection, and to direct the disposition of its proceeds; to provide for the enforcement of liens created by this act and for suits to quiet title against claims of lien arising hereunder; to repeal an act entitled "An Act to establish a tax on gifts, legacies, inheritances, bequests, devises, successions and transfers, to provide for its collection and to direct the disposition of its proceeds; to provide for the enforcement of liens created by this act and for suits to quiet title against claims of lien arising hereunder; to repeal an act entitled 'An Act to establish a tax on collateral inheritances, bequests and devises, to provide for the collection and to direct the disposition of its proceeds,' approved March 23, 1893, and all amendments thereto, and to repeal all acts and parts of acts in conflict with this act," approved March 20, 1905, and all amendments thereto and all acts and parts of acts in conflict with this act.

#### Property Subject to Tax. — Lien.

S. 1. A tax shall be and is hereby imposed upon the transfer of any property, real, personal or mixed, or of any interest therein or income therefrom, in trust or otherwise, to persons, institutions or corporations, not hereinafter exempted, to be paid to the treasurer of the proper county, as hereinafter directed, for the use of the state, in the following cases: —

(1) When the transfer is by will or by the intestate or homestead laws of this state, from any person dying seized or possessed of the property while a resident of the state, or by any probate homestead set apart from said property.

(2) When the transfer is by will or intestate laws of property within this state and the decedent was a non-resident of the state at the time of his death.

(3) When the transfer is of property made by a resident, or by a non-resident when such non-resident's property is within this state, by deed, grant, bargain, sale, assignment or gift, made without valuable and adequate consideration in contemplation of the death of the grantor, vendor, assignor or donor, or intended to take effect in possession or enjoyment at or after such death. When any such



person, institution or corporation becomes beneficially entitled in possession or expectancy to any property or the income therefrom, by any such transfer whether made before or after the passage of this act.

(4) Such taxes shall be and remain a lien upon the property passed or transferred until paid, and the person to whom the property passes or is transferred and all administrators, executors and trustees of every estate so transferred or passed, shall be liable for any and all such taxes until the same shall have been paid as hereinafter directed; provided, that unless sued for within five years after they are due and legally demandable, such taxes shall cease to be a lien as against any *bona fide* purchaser of real property; and provided that no such lien shall cease within five years from the date of the passage of this act. The tax so imposed shall be upon the market value of such property at the rates hereinafter prescribed and only upon the excess over the exemptions hereinafter granted.

Whenever any person or corporation shall exercise a power of appointment derived from any disposition of property made either before or after the passage of this act, such appointment, when made, shall be deemed a transfer taxable under the provisions of this act, in the same manner as though the property to which such appointment relates belonged absolutely to the donee of such power, and had been bequeathed or devised by such donee by will; and whenever any person or corporation possessing such power of appointment so derived shall omit or fail to exercise the same within the time provided therefor, in whole or in part, a transfer taxable under the provisions of this act shall be deemed to take place to the extent of such omission or failure, in the same manner as though the persons or corporations thereby becoming entitled to the possession or enjoyment of the property to which such power related had succeeded thereto by a will of the donee of the power failing to exercise such power, taking effect at the time of such omission or failure.

[See notes to the Acts of 1893 and 1905, *ante*, pp. 313, 320.]

### Primary Rates.

S. 2. When the property or any beneficial interest therein so passed or transferred exceeds in value the exemption hereinafter specified and shall not exceed in value twenty-five thousand dollars, the tax hereby imposed shall be:—

(1) Where the person or persons entitled to any beneficial interest in such property shall be the husband, wife, lineal issue, lineal ancestor of the decedent or any child adopted as such in conformity with the laws of this state, or any child to whom such decedent for not less than ten years prior to such transfer stood in the mutually acknowledged relation of a parent, provided, however, such relationship began at or before the child's fifteenth birthday, and was continuous for said ten years thereafter, or any lineal issue of such adopted or mutually acknowledged child, at the rate of one per centum of the clear value of such interest in such property.

(2) Where the person or persons entitled to any beneficial interest in such property shall be the brother or sister or a descendant of a brother or sister of the decedent, a wife or widow of a son, or the husband of a daughter of the decedent, at the rate of two per centum of the clear value of such interest in such property.

(3) Where the person or persons entitled to any beneficial interest in such property shall be the brother or sister of the father or mother or a descendant

of a brother or sister of the father or mother of the decedent, at the rate of three per centum of the clear value of such interest in such property.

(4) Where the person or persons entitled to any beneficial interests in such property shall be the brother or sister of the grandfather or grandmother or a descendant of the brother or sister of the grandfather or grandmother of the decedent, at the rate of four per centum of the clear value of such interest in such property.

(5) Where the person or persons entitled to any beneficial interest in such property shall be in any other degree of collateral consanguinity than is hereinbefore stated, or shall be a stranger in blood to the decedent, or shall be a body politic or corporate, at the rate of five per centum of the clear value of such interest in such property.

[See notes to the Act of 1906, *ante*, p. 324.]

#### **Progressive Rates.**

S. 3. The foregoing rates in section two are for convenience termed the primary rates. When the market value of such property or interest exceeds twenty-five thousand dollars, the rates of tax upon such excess shall be as follows:

(1) Upon all in excess of \$25,000 and up to \$50,000, two times the primary rates.

(2) Upon all in excess of \$50,000 and up to \$100,000, three times the primary rates.

(3) Upon all in excess of \$100,000 and up to \$500,000, four times the primary rates.

(4) Upon all in excess of \$500,000, five times the primary rates.

[See notes to the Act of 1906, *ante*, p. 324.]

#### **Exemptions.**

S. 4. The following exemptions from the tax are hereby allowed:—

(1) All property transferred to societies, corporations and institutions now or hereafter exempted by law from taxation, or to any public corporation, or to any society, corporation, institution or association of persons engaged in or devoted to any charitable, benevolent, educational, public or other like work (pecuniary profit not being its object or purpose), or to any person, society, corporation, institution or association of persons in trust for or to be devoted to any charitable, benevolent, educational or public purpose, by reason whereof any such person or corporation shall become beneficially entitled, in possession or expectancy, to any such property or to the income thereof shall be exempt.

(2) Property of the clear value of twenty-four thousand (\$24,000.00) dollars transferred to the widow or to a minor child of the decedent, and of ten thousand (\$10,000.00) dollars transferred to each of the other persons described in the first sub-division of section two shall be exempt.

(3) Property of the clear value of two thousand (\$2,000.00) dollars transferred to each of the persons described in the second sub-division of section two shall be exempt.

(4) Property of the clear value of one thousand five hundred (\$1,500.00) dollars transferred to each of the persons described in the third sub-division of section two shall be exempt.

(5) Property of the clear value of one thousand (\$1,000.00) dollars transferred to each of the persons described in the fourth sub-division of section two shall be exempt.

(6) Property of the clear value of five hundred (\$500.00) dollars transferred to each of the persons and corporations described in the fifth sub-division of section two shall be exempt.

[See notes to the Act of 1905, *ante*, p. 324.]

**Life Estates. — Estates Determinable on Future Events.**

S. 5. When any grant, gift, legacy, devise or succession upon which a tax is imposed by section one of this act shall be an estate, income, or interest for a term of years or for life, or determinable upon any future or contingent event, or shall be a remainder, reversion or other expectancy, real or personal, the entire property or fund by which such estate, income or interest is supported, or of which it is a part, shall be appraised immediately after the death of the decedent and the market value thereof determined in the manner provided in section fifteen of this act and the tax prescribed by this act shall be immediately due and payable to the treasurer of the proper county and, together with the interest thereon, shall be and remain a lien on said property until the same is paid; provided, that the person or persons, or body politic or corporate, beneficially interested in the property chargeable with said tax, may elect not to pay the same until they shall come into the actual possession or enjoyment of such property, and in that case such person or persons or body politic or corporate, shall execute a bond to the people of the state of California, in a penalty of twice the amount of the tax arising upon personal estate, with such sureties as the said superior court may approve, conditioned for the payment of said tax and interest thereon, at such time or period as they or their representatives may come into the actual possession or enjoyment of such property, which bond shall be filed in the office of the county clerk of the proper county and a certified copy thereof shall be immediately transmitted to the state controller; provided further, that such person shall make a full and verified return of such property to said court, and file the same in the office of the county clerk within one year from the death of the decedent, and within that period enter into such security and renew the same every five years.

**Bequests to Executors or Trustees.**

S. 6. Whenever a decedent appoints or names one or more executors or trustees, and makes a bequest or devise of property to them in lieu of commissions or allowances, which otherwise would be liable to said tax, or appoints them his residuary legatees and said bequest, devises, or residuary legacies exceed what would be a reasonable compensation for their services, such excess over and above the exemptions herein provided for shall be liable to said tax; and the superior court in which the probate proceedings are pending shall fix the compensation.

**Taxes Due and Payable at Death. — Interest. — Discount.**

S. 7. All taxes imposed by this act, unless otherwise herein provided for, shall be due and payable at the death of the decedent and if the same are paid within eighteen months, no interest shall be charged and collected thereon, but if not so paid, interest at the rate of ten per centum per annum shall be charged and collected from the time said tax accrued; provided, that if said tax is paid within six months from the accruing thereof a discount of five per centum shall be allowed and deducted from said tax. And in all cases where the executors, administrators

or trustees do not pay such tax within eighteen months from the death of the decedent, they shall be required to give a bond in the form and to the effect prescribed in section five of this act for the payment of said tax, together with interest.

**Penalty. — Interest.**

S. 8. The penalty of ten per cent per annum imposed by section seven hereof, for the non-payment of said tax, shall not be charged in cases where, in the judgment of the court, by reason of claims made upon the estate, necessary litigation or other unavoidable cause of delay, the estate of any decedent, or a part thereof can not be settled at the end of eighteen months from the death of the decedent; but in such cases seven per cent per annum shall be charged upon the said tax from the expiration of said eighteen months until the cause of such delay is removed, after which ten per cent interest per annum shall again be charged until the tax is paid; but litigation to defeat the payment of the tax shall not be considered necessary litigation.

**Administrators to Deduct Amount of Tax.**

S. 9. Any administrator, executor or trustee having in charge or trust any legacy or property for distribution, subject to the said tax, shall deduct the tax therefrom, or if the legacy or property be not money he shall collect the tax thereon, upon the market value thereof, from the legatee or person entitled to such property, and he shall not deliver, or be compelled to deliver, any specific legacy or property subject to tax to any person until he shall have collected the tax thereon; and whenever any such legacy shall be charged upon or payable out of real estate, the executor, administrator or trustee shall collect said tax from the distributee thereof, and the same shall remain a charge on such real estate until paid; if, however, such legacy be given in money to any person for a limited period, the executor, administrator or trustee shall retain the tax upon the whole amount; but if it be not in money he shall make application to the superior court to make an apportionment, if the case require it, of the sum to be paid into his hands by such legatees, and for such further order relative thereto as the case may require.

[See notes to the Act of 1905, *ante*, p. 326.]

**Power of Sale.**

S. 10. All executors, administrators and trustees shall have full power to sell so much of the property of the decedent as will enable them to pay said tax, in the same manner as they may be enabled by law to do for the payment of debts of the estate, and the amount of said tax shall be paid as hereinafter directed.

**Payment. — Receipts.**

S. 11. Every sum of money retained by an executor, administrator or trustee, or paid into his hands, for any tax on property, shall be paid by him, within thirty days thereafter, to the treasurer of the county in which the probate proceedings are pending. Upon the payment to any county treasurer of any tax due under this act, such treasurer shall issue a receipt therefor in triplicate, one copy of which he shall deliver to the person paying said tax, and the original and one copy thereof he shall immediately send to the controller of state, whose duty it shall be to charge the treasurer so receiving the tax with the amount thereof, and said

controller shall retain one of said receipts and the other he shall countersign and seal with the seal of his office, and immediately transmit to the clerk of the court fixing such tax. And an executor, administrator or trustee shall not be entitled to credits in his accounts, nor be discharged from liability for such tax, nor shall said estate be distributed, unless a receipt so sealed and countersigned by the controller, or a copy thereof, certified by him, shall have been filed with the court.

Any person shall, upon payment to the county treasurer of the sum of fifty cents, be entitled to a duplicate, or copy, of any receipt that may have been given by said treasurer for the payment of any tax under this act.

[See notes to the Act of 1906, *ante*, p. 327.]

#### **Refund to Pay Debts.**

S. 12. Whenever any debts shall be proven against the estate of a decedent after the payment of legacies or distribution of property from which the said tax has been deducted or upon which it has been paid, and a refund is made by the legatee, devisee, heir or next of kin, a proportion of the tax so deducted or paid shall be repaid to him by the executor, administrator or trustee, if the said tax has not been paid to the county treasurer or to the state treasurer, or by said county treasurer, or said state treasurer (on warrant of the state controller) if it has been so paid.

#### **Duty of Administrator on Transfer of Stock.**

S. 13. If a foreign executor, administrator or trustee shall assign or transfer any stock or obligation in this state standing in the name of a decedent, or in trust for a decedent, liable to any such tax, the tax shall be paid to the treasurer of the proper county on the transfer thereof. No safe deposit company, trust company, corporation, bank or other institution, person or persons having in possession or under control securities, deposits or other assets belonging to or standing in the name of a decedent who was a resident or non-resident or belonging to, or standing in the joint names of such a decedent and one or more persons, including the shares of the capital stock of, or other interests in, the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer herein provided, shall deliver or transfer the same to the executors, administrators or legal representatives of said decedent, or to the survivor or survivors when held in the joint names of a decedent and one or more persons, or upon their order or request, unless notice of the time and place of such intended delivery or transfer be served upon the state controller and county treasurer at least ten days prior to said delivery or transfer; nor shall any such safe deposit company, trust company, corporation, bank or other institution, person or persons, deliver or transfer any securities, deposits or other assets belonging to or standing in the name of a decedent, or belonging to, or standing in the joint names of a decedent and one or more persons, including the shares of the capital stock of, or other interests in, the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer, without retaining a sufficient portion or amount thereof to pay any tax and interest which may thereafter be assessed on account of the delivery or transfer of such securities, deposits or other assets, including the shares of the capital stock of, or other interests in, the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer, under the provisions of this act, unless

the state controller, or person by him in writing authorized so to do, consents thereto in writing. And it shall be lawful for the state controller or the county treasurer, personally or by representatives, to examine said securities, deposits or assets at the time of such delivery or transfer. Failure to serve such notice or failure to allow such examination, or failure to retain a sufficient portion or amount to pay such tax and interest as herein provided, or violation of the provisions of this section, shall render said safe deposit company, trust company, corporation, bank or other institution, person or persons liable to the payment of the amount of the tax and interest due or thereafter to become due upon said securities, deposits or other assets, including the shares of the capital stock of, or other interests in, the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer, and in addition thereto, a penalty of not less than one thousand nor more than twenty thousand dollars; and the payment of such tax and interest thereon, or of the penalty above prescribed, or both, may be enforced in an action brought by the state controller or county treasurer in any court of competent jurisdiction.

#### Appraisers.

S. 14. The state controller shall appoint, and may at his pleasure remove, one or more persons in each county of the state to act as inheritance tax appraisers therein. Every such inheritance tax appraiser (in addition to any fees paid him as appraiser under section 1444 of the Code of Civil Procedure) shall be paid by the county treasurer, out of any funds that he may have in his hands on account of said tax, on presentation of a sworn itemized account and on the certificate of the superior court, at the rate of five dollars per day for every day actually and necessarily employed in said inheritance tax appraisal, together with his actual and necessary traveling and other incidental expenses, and the fees paid such witnesses as he shall subpoena before him, which fees shall be the same as those now paid to witnesses subpoenaed to attend in courts of record. Any such appraiser who shall take any fee or reward, other than such as may be allowed him by law, from any executor, administrator, trustee, legatee, next of kin or heir of any decedent, or from any other person liable to pay said tax, or any portion thereof, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than two hundred and fifty dollars nor more than five hundred dollars, or be imprisoned in the county jail ninety days, or both, and in addition thereto the court shall dismiss him from such service. (*Cf.* Cal. St., 1911, c. 394, *post* p. 346.)

[See notes to the Act of 1905, *ante*, p. 328.]

#### Appraisal.

S. 15. (1) The superior court having jurisdiction to determine any such tax, either upon its own motion or upon the application of any interested person, including the state controller or county treasurer, shall by order direct the person, or one of the persons, appointed pursuant to section 14 of this act, to fix the clear market value of property of persons whose estates shall be subject to the payment of any tax under this act. Every such appraiser shall forthwith give notice by mail to all persons known to have a claim or interest in the property to be appraised, including the state controller and the treasurer of the county in which such tax is to be paid, and to such person or persons as the superior court may by order

direct, of the time and place when he will hear all persons interested in the appraisal of such estate. He shall thereupon appraise the said property at its fair market value as herein prescribed; and for the purpose of making said appraisal the said appraiser is hereby authorized to issue subpoenas and compel the attendance of witnesses before him, to administer oaths, and to take the evidence of such witnesses under oath concerning such property and the value thereof; and he shall make report thereof and of such value in writing to the said superior court, together with the depositions of the witnesses examined, and such other facts in relation thereto as said superior court may order or require; and the value of every future or contingent or limited estate, income or interest shall, for the purposes of this act, be determined by the rule, method and standards of mortality and of value that are set forth in the actuaries' combined experience tables of mortality for ascertaining the value of policies of life insurance and annuities, and for the determination of the liabilities of life insurance companies, save that the rate of interest to be assessed in computing the present value of all future interests and contingencies shall be five per centum per annum.

The insurance commissioner shall, on the application of any superior court, determine the value of any future or contingent estates, income or interest therein limited, contingent, dependent or determinable upon the life or lives of persons in being, upon the facts contained in any such appraiser's report, or other facts to him submitted by said court, and certify the same to the superior court, and his certificate shall be conclusive evidence that the method of computation adopted therein is correct.

In estimating the value of any estate or interest in property, to the beneficial enjoyment or possession whereof there are persons or corporations presently entitled thereto, no allowance shall be made on account of any contingent incumbrance thereon, nor on account of any contingency upon the happening of which the estate or property or some part thereof or interest therein might be abridged, defeated or diminished; provided, however, that in the event of such incumbrance taking effect as an actual burden upon the interest of the beneficiary, or in the event of the abridgment, defeat or diminution of said estate or property or interest therein as aforesaid, a return shall be made to the person properly entitled thereto of a proportionate amount of such tax on account of the incumbrance when taking effect, or so much as will reduce the same to the amount which would have been assessed on account of the actual duration or extent of the estate or interest enjoyed. Such return of tax shall be made in the manner provided by section twelve hereof upon order of the court having jurisdiction.

Where any property shall, after the passage of this act, be transferred subject to any charge, estate or interest, determinable by the death of any person, or at any period ascertainable only by reference to death, the increase accruing to any person or corporation upon the extinction or determination of such charge, estate or interest, shall be deemed a transfer of property taxable under the provisions of this act in the same manner as though the person or corporation beneficially entitled thereto had then acquired such increase from the person from whom the title to their respective estates or interests is derived.

When property is transferred in trust or otherwise, and the rights, interest or estates of the transferees are dependent upon contingencies or conditions whereby they may be wholly or in part created, defeated, extended or abridged, a tax shall be imposed upon said transfer at the highest rate which, on the happening

of any of the said contingencies or conditions, would be possible under the provisions of this act, and such tax so imposed shall be due and payable forthwith by the executors or trustees out of the property transferred; provided, however, that on the happening of any contingency whereby the said property, or any part thereof, is transferred to a person or corporation exempt from taxation under the provisions of this act, or to any person taxable at a rate less than the rate imposed and paid, such person or corporation shall be entitled to a return of so much of the tax imposed and paid as is the difference between the amount paid and the amount which said person or corporation should pay under the provisions of this act. Such return of overpayment shall be made in the manner provided by section twelve of this act, upon order of the court having jurisdiction.

Estates in expectancy which are contingent or defeasible and in which proceedings for the determination of the tax have not been taken or where the taxation thereof has been held in abeyance, shall be appraised at their full, undiminished value when the persons entitled thereto shall come into the beneficial enjoyment or possession thereof, without diminution for or on account of any valuation theretofore made of the particular estates for purposes of taxation, upon which said estates in expectancy may have been limited.

Where an estate for life or for years can be divested by the act or omission of the legatee or devisee it shall be taxed as if there were no possibility of such divesting.

The report of the appraiser shall be made in duplicate, one of which duplicates shall be filed with the clerk of said court and the other in the office of the state controller.

(2) From such report of appraisal and other proof relating to any such estate, or property, before the superior court, said court shall, by order, forthwith assess and fix the market value of such property and the amount of tax to which the same is liable, and the clerk of said court shall immediately give notice thereof by mail to the county treasurer and the state controller and to all interested persons who shall have furnished said clerk with their names and addresses for the purpose of receiving such notice.

But said superior court may determine such tax or taxes without appointing an inheritance tax appraiser; provided, that in such determination, said court shall fix a day upon which it will hear all parties interested in said property and in said tax, and said court shall order the clerk thereof to give notice of said hearing for such time, not less than ten days, and in such manner as said court shall direct, and said clerk shall at least ten days before said hearing mail a copy of such notice to the county treasurer and a copy to the state controller.

[See notes to the Act of 1905, *ante*, p. 328, and the St. 1911, c. 394, *post*, p. 346.]

#### **Jurisdiction of Superior Court.**

S. 16. The superior court in the county in which is situate the real property of a decedent who was not a resident of the state, or if there be no real property, then in the county in which any of the personal property of such non-resident is situate, or in the county of which the decedent was a resident at the time of his death, shall have jurisdiction to hear and determine all questions in relation to the tax arising under the provisions of this act, and the court first acquiring jurisdiction hereunder shall retain the same, to the exclusion of every other

[See notes to the Act of 1905, *ante*, p. 328.]



**Citation.**

S. 17. If it shall appear to the superior court upon petition of the state controller or the county treasurer or any other interested person that any transfer has been made within the meaning of this act and the taxability thereof and the liability for such tax and the amount thereof have not been determined, and that no proceedings are pending in any court in this state wherein the taxability of such transfer, the liability therefor and the amount thereof may be determined, said court shall issue a citation, citing the persons who may appear liable therefor, or known to own any interest in or part of the property transferred, to appear before the court on a day certain, not more than ten weeks from the date of such citation, and show cause why said tax should not be determined and paid. The service of such citation, and the time, manner and proof thereof, and the hearing and determination thereon, and the enforcement of the determination or decree, shall conform to the provisions of chapter XII of title XI of part three of the Code of Civil Procedure; and the clerk of the court shall, upon the request of the state controller or the treasurer of the county, furnish, without fee, one or more transcripts of such decree, and the same shall be docketed and filed by the county clerk of any county in the state, without fee, in the same manner and with the same effect as provided by section six hundred and seventy-four of said Code of Civil Procedure for filing a transcript of an original docket. The superior court may hear the said cause upon the relation of the parties and the testimony of witnesses, and evidence produced in open court, and, if the court shall find said property is not subject to any tax, as herein provided, the court shall, by order, so determine; but if it shall appear that said property, or any part thereof, is subject to any such tax, the same shall be appraised and taxed as in other cases.

**Actions to Recover Tax.**

S. 18. If, after the expiration of eighteen months from the accrual of any tax under this article, such tax shall remain due and unpaid after the refusal or neglect of the persons liable therefor to pay the same, the county treasurer shall notify, or the state controller may notify, the district attorney of the county in writing of such failure or neglect, and such district attorney shall bring and prosecute an action or actions in the name of the state as plaintiff, for the recovery of such tax and for the purpose of enforcing any lien or liens against all or any of the property subject thereto. In any such action the owner of any property or of any interest in property against which the lien of any such tax is sought to be enforced and any predecessor in interest of any such owner whose title or interest was deraigned through any such decedent by will or succession or by decree of distribution of the estate of such decedent, and any lienor or incumbrancer subsequent to the lien of such tax may be made a party defendant. The enumeration in this section of the persons who may be made defendants shall not be deemed to be exclusive, but the joinder or non-joinder of parties, except when otherwise herein provided, shall be governed by the rules in equity in similar cases.

**Actions to Quiet Title.**

(a) Actions may be brought against the state for the purpose of quieting the title to any property, against the lien or claim of lien of any tax or taxes under this act, or for the purpose of having it determined that any property is not subject to any lien for taxes under this act. In any such action, the plaintiffs may be

any administrator or executor of the estate or will of any decedent, whether the said estate shall have been fully administered and the estate settled and closed or not, and any heir, legatee or devisee of any such decedent, or trustee of the estate or of any part of the estate of such decedent, or distributee of the estate or of any part of the estate of any such decedent, and any assignee, grantee or successor in interest of any of such persons and all or any other persons who might be made parties defendant in any action brought by the state under the provisions of this section, and notwithstanding that all or any of the persons enumerated in this section shall or may have assigned, granted, conveyed or otherwise parted with all or any interest in or title to the property, or any thereof, involved in any such claim of lien before the commencement of such action. All or any of the persons in this action enumerated may be joined or united as parties plaintiff. The enumeration in this section of the persons who may be made parties shall not be deemed to be exclusive, but the joinder or non-joinder of parties, except when otherwise herein provided, shall be governed by the rules in equity in similar cases. In all cases any person who might properly be a party plaintiff in any such action who refuses to join as plaintiff may be made a defendant.

(b) All actions under this section shall be commenced in the superior court of the county in which is situated any part of any real property against which any lien is sought to be enforced, or to which title is sought to be quieted against any lien, or claim of lien; but if in said action no lien against real property is sought to be enforced, the action shall be brought in the superior court of the county which has or which had jurisdiction of the administration of the estate of the decedent mentioned herein.

(c) Service of summons in the actions brought against the state shall be made on the controller of state and on the district attorney of the county in which the estate of the decedent mentioned herein is being administered, or has been administered in probate proceedings, and it shall be the duty of said district attorney to defend all such actions.

(d) The procedure and practice in all actions brought under this section, except as otherwise provided in this act, shall be governed by the provisions of the Code of Civil Procedure in relation to civil actions, so far as the same shall or may be applicable, including all provisions relating to motions for new trials and appeals.

(e) The remedies provided in this section shall be in addition to and not exclusive of any remedies provided in the sections preceding this section.

#### **Proceedings for Determining and Collecting Tax.**

S. 19. Whenever the treasurer of any county shall have reason to believe that any transfer has been made within the meaning of this act and that a tax due thereon remains undetermined and unpaid, he shall notify the district attorney in writing of such transfer, and the district attorney, if he have probable cause to believe a tax is due, and remains undetermined, shall prosecute the necessary proceeding in the superior court to determine and fix such tax and for the enforcement and collection thereof.

The county treasurer in his discretion, for the better furtherance of the purposes of this act, shall be allowed to employ such special attorney or attorneys as he may deem necessary, provided that such attorney shall be paid for his services out of the fees allowed such treasurer, as provided in section twenty-two of this act.

**Expenses.**

S. 20. Whenever the superior court of any county shall certify that there was probable cause for issuing a citation and taking the proceedings specified in section seventeen or eighteen of this act or for taking any proceeding or action to determine the taxability of any transfer within the meaning of this act, or to secure fair appraisal of any property taxable under this act, or for taking any appeal from any order or judgment fixing such tax or determining the taxability of any transfer within the meaning of this act, the state treasurer shall pay, or allow, to the treasurer of any county, all expenses incurred therefor, and for his other lawful disbursements that have not otherwise been paid.

**Duties of County Treasurer.**

S. 21. The treasurer of each county shall collect and pay the state treasurer all taxes that may be due and payable under this act, who shall give him a receipt therefor; of which collection and payment he shall make a report, under oath, to the controller, between the first and fifteenth days of May and December of each year, stating for what estate paid, and in such form and containing such particulars as the controller may prescribe; and for all such taxes collected by him and not paid to the state treasurer by the first day of June and January of each year he shall pay interest at the rate of ten per centum per annum.

**Fees of County Treasurer.**

S. 22. The treasurer of each county shall be allowed to retain, on all taxes paid and accounted for by him each year under this act, in addition to his salary or fees now allowed by law, three per centum on the first fifty thousand dollars so paid and accounted for by him, one and one-half per centum on the next fifty thousand dollars so paid and accounted for by him, and one-half of one per centum on all additional sums so paid and accounted for by him; provided, that no county treasurer shall be entitled to retain to his own use more than the sum of two hundred dollars out of the inheritance taxes paid on account of any transfer or transfers made by, or resulting from the death of, any one decedent.

**Attorneys for County Treasurer.**

S. 23. The treasurer of each county, in his discretion, for the better furtherance of the purposes of this act, shall be allowed to employ such special attorney or attorneys, as he may deem necessary, who shall have all the authority conferred upon the district attorney by sections seventeen and eighteen of this act, and such attorney shall be paid for his services out of the money collected under the provisions of this act a reasonable fee to be allowed by the probate court having jurisdiction, said fee, together with the sum retained by the county treasurer, in no one case to exceed the per centum allowed in such case by section twenty-two of this act.

**Counsel. — Expenses.**

S. 24. The state controller, whenever he shall be cited as a party in any proceeding or action to determine any tax under this act provided, or whenever he shall deem it necessary for the better enforcement of this act to commence or appear in any proceeding or action to determine any tax hereunder, may, by and with the consent and approval of the attorney general, designate and employ

counsel to represent him on behalf of the state, and, by and with such consent of the attorney general, he is hereby authorized to incur the necessary expense for such employment and any reasonable and necessary expense incident thereto. And the county treasurer is hereby authorized and directed to pay out of any funds which may be in his hands on account of this tax, on presentation of a sworn itemized account and on certificate of the state controller and attorney general, all expenses incurred as in this section above provided, but no expense for legal services, up to and including the entry of the order of the court fixing the tax and the same becoming final, shall exceed ten per centum of the tax and penalties collected; provided, that all reasonable and necessary expenses incurred, other than attorneys' fees, including expense of serving processes, procuring evidence and printing and preparing of necessary legal papers, may be allowed and paid in the manner above provided, even though no tax be recovered in such action or proceeding, and the limitations herein made shall not apply thereto.

#### **Use of Proceeds of Tax.**

S. 25. All taxes levied and collected under this act, up to the amount of \$250,000 annually, shall be paid into the treasury of the state, for the uses of the state school fund, and all taxes levied and collected in excess of \$250,000 annually shall be paid into the state treasury to the credit of the general fund thereof.

#### **Penalties.**

S. 26. Every officer who fails or refuses to perform, within a reasonable time, any and every duty required by the provisions of this act, or who fails or refuses to make and deliver within a reasonable time any statement or record required by this act, shall forfeit to the state of California the sum of one thousand dollars, to be recovered in an action brought by the attorney general in the name of the people of the state on the relation of the controller.

#### **Definitions.**

S. 27. The words "estate" and "property" as used in this act shall be taken to mean the real and personal property or interest therein of the testator, intestate, grantor, bargainor, vendor or donor passing or transferred to individual legatees, devisees, heirs, next of kin, grantees, donees, vendees, or successors and shall include all personal property within or without the state. The word "transfer" as used in this act shall be taken to include the passing of property or any interest therein, in possession or enjoyment, present or future, by inheritance, descent, devise, succession, bequest, grant, deed, bargain, sale, gift or appointment in the manner herein described. The word "decedent" as used in this act shall include the testator, intestate, grantor, bargainor, vendor or donor.

The words "county treasurer" and "district attorney" and "inheritance tax appraiser," as used in this act, shall be taken to mean the treasurer or the district attorney or the inheritance tax appraiser of the county of the superior court having jurisdiction, as provided in section sixteen of this act.

The words "contemplation of death" as used in this act shall be taken to include that expectancy of death which actuates the mind of a person on the execution of his will, and in no wise shall said words be limited and restricted to that expectancy of death which actuates the mind of a person in making a gift *causa mortis*; and it is hereby declared to be the intent and purpose of this act to tax any and all

transfers which are made in lieu of or to avoid the passing of the property transferred by testate or intestate laws.

### **Repeal.**

S. 28. An act entitled "An Act to establish a tax on gifts, legacies, inheritances, bequests, devises, successions and transfers, to provide for its collection, and to direct the disposition of its proceeds; to provide for the enforcement of liens created by this act and for suits to quiet title against claims of lien arising hereunder; to repeal an act entitled 'An Act to establish a tax on collateral inheritances, bequests and devises, to provide for the collection and to direct the disposition of its proceeds,' approved March 23, 1893, and all amendments thereto, and all acts and parts of acts in conflict with this act," approved March 20, 1905, and all amendments thereto, and all acts and parts of acts in conflict with this act are hereby expressly repealed; provided, however, that such repeal shall in no wise affect any suit, prosecution or court proceeding pending at the time this act shall take effect, or any right which the state of California may have at the time of the taking effect of this act, to claim a tax upon any property under the provisions of the act or acts hereby repealed, for which no proceeding has been commenced; nor affect any appeal, right of appeal in any suit pending, or orders fixing tax, existing in this state at the time of the taking effect of this act.

S. 29. This act shall take effect and be in force from and after July 1, 1911.

[See notes to the Act of 1905, s. 27, *ante*, pp. 330, 331.]

**Cal. St. 1911, c. 394.** Approved April 7, 1911.

**AN ACT TO AMEND SECTION 1444 OF THE CODE OF CIVIL PROCEDURE OF THE STATE OF CALIFORNIA, RELATING TO APPRAISERS OF ESTATES OF DECEASED PERSONS.**

S. 1. Section 1444 of the Code of Civil Procedure of the state of California is hereby amended to read as follows: —

1444. To make the appraisement, the court, or a judge thereof, must appoint three disinterested persons, one of whom must be one of the inheritance tax appraisers provided for by law (any two of which appraisers may act); provided, that the court may, in its discretion, appoint said inheritance tax appraiser as sole appraiser to appraise said estate. Said appraisers are entitled to receive a reasonable compensation for their services, not to exceed five dollars per day, to be allowed by the court or judge. The appraisers or appraiser must, with the inventory, file a verified account of their or his services and disbursements. If any part of the estate is in any other county than that in which letters issued, an appraiser or appraisers thereof may in the same manner as above provided, be appointed, either by the court or judge having jurisdiction of the estate, or by the court or judge of such other county, on request of the court or judge having jurisdiction. No clerk or deputy, nor any person related by consanguinity or affinity to or connected by marriage with, or being a partner or employee of the judge of the court, shall be appointed or shall be competent to act as appraiser in any estate, or matter or proceeding pending before said judge or in said court.

S. 2. This act shall take effect and be in force from and after July 1, 1911.

## COLORADO.

### In General.

Colorado enacted an inheritance tax in 1901, using the Illinois statute of 1895 as a model. It was radically amended in 1909.

Colorado taxes stock in a Colorado corporation owned by a non-resident. It is only within the past year that such property has been taxed to any appreciable extent. The state is now deriving considerable revenue from this source.

Any person or corporation must notify the attorney general before delivering or transferring securities of a non-resident, and must see that the tax is paid. A non-resident's estate must make an affidavit as to its property before consent will be given to the transfer of securities.

### Constitutional Limitations.

**Colorado Constitution 1876, a. 10.**

S. 3. All taxes shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws, which shall prescribe such regulations as shall secure a just valuation for taxation of all property, real and personal. . . .

[This language remains unchanged, although the balance of the section was amended in 1880, 1892 and 1904.]

### List of Statutes.

1901. Statutes of Colorado, c. 94, s. 23-43.

1902. " " " c. 3, p. 43.

1907. " " " c. 214, p. 554.

1909. " " " c. 193, p. 460.

Mill's Annotated Statutes (Revised Supplement 1891-1905), ss. 3813-3832 inclusive. (This is the 1902 Act above referred to.)

### THE STATUTE OF 1901.

Colo. St. 1901, c. 94, s. 23, imposes a tax of 2 per cent on lineals, with an exemption of \$5,000; 3 per cent on collaterals, and in all other cases the rate is graduated. On all estates of \$10,000 or less, 3 per cent; \$10,000 to \$20,000, 4 per cent; \$20,000 to \$50,000, 5 per cent; over \$50,000, 6 per cent, with an exemption of any estate valued at less than \$500.

Colo. St. 1901, c. 94, ss. 24-43, provide for the assessment and collection of the tax. This statute was approved April 5, 1901.

## THE STATUTE OF 1902.

### History.

The Colorado statute is based upon the Illinois statute. *In re Inheritance Tax*, 23 Colo. 392, 48 P. 535.

### Title. — One Subject.

Colo. St. 1902, c. 3, s. 21, *et seq.*, was approved March 22, 1902. The act is entitled "An Act in relation to public revenue and repealing all previous acts or parts of acts in conflict therewith."

This act is not void as being too general in title in view of the financial history of the state. One would expect to find in an act entitled Revenue, provisions imposing a duty upon privileges or successions.

The statute is not void as containing more than one subject simply because it includes an inheritance tax and a property tax. The claim was made that the statute modified the law of descent and the law of wills and also included the taxation of property. The court is of the opinion that the title of the act clearly embraces provisions providing for public revenue by tax on inheritances. *In re Magnes*, 32 Colo. 527, 77 P. 853.

S. 21. All property, real, personal and mixed, which shall pass by will or by the intestate laws of this state from any person who may die seized or possessed of the same while a resident of this state, or if decedent was not a resident of this state at the time of his death, which property or any part thereof shall be within this state or any interest therein or income therefrom, which shall be transferred by deed, grant, sale or gift made in contemplation of the death of the grantor or bargainor or intended to take effect, in possession or enjoyment after such death, to any person or persons or to any body politic or corporate in trust or otherwise, or by reason whereof any person or body politic or corporate shall become beneficially entitled in possession or expectation to any property or income thereof, shall be and is, subject to a tax at the rate hereinafter specified to be paid to the treasurer of the proper county for the use of the state, and all heirs, legatees and devisees, administrators, executors and trustees shall be liable for any and all such taxes until the same shall have been paid as hereinafter directed. When the beneficial interests to any property or income therefrom shall pass to or for the use of any father, mother, husband, wife, child, brother, sister, wife or widow of the son or the husband of the daughter, or any child or children adopted as such in conformity with the laws of the state of Colorado, or to any person to

whom the deceased, for not less than ten years prior to death, stood in the acknowledged relation of a parent, or to any lineal descendant born in lawful wedlock, in every such case the rate of tax shall be two dollars on every hundred dollars of the clear market value of such property received by each person, and at and after the same rate for every less amount; Provided, that the sum of ten thousand dollars of any such estate shall not be subject to any such duty or taxes, and that only the amount in excess of ten thousand dollars shall be subject to the above duty or tax. When the beneficial interests to any property or income therefrom shall pass to or for the use of any uncle, aunt, niece, nephew or any lineal descendant of the same, in every such case the rate of such tax shall be three dollars on every one hundred dollars of the clear market value of such property received by each person. In all other cases the rate shall be as follows: On each and every hundred dollars of the clear market value of all property and at the same rate for any less amount; on all estates of ten thousand dollars and less—three dollars on all estates of over ten thousand dollars and not exceeding twenty thousand dollars, four dollars; on all estates over twenty thousand dollars and not exceeding fifty thousand dollars, five dollars, and on all estates over fifty thousand dollars, six dollars; Provided, that an estate in the above case which may be valued at a less sum than five hundred dollars shall not be subject to any such duty or tax.

### **Nature.**

The fact that a statute is called an inheritance tax is of much significance. A tax upon an interest in personal property is a legacy tax. A tax upon an interest in real property could be aptly termed a succession tax. No term sufficiently comprehensive could be more aptly employed to embrace a tax upon the right to acquire interests in both real and personal property passing by will or by inheritance whether lineal or collateral than the term "inheritance tax." By this term the legislature intended to express the specific nature of the tax and that it should operate upon all interests to which a person succeeded upon death. *In re Macky*, 46 Colo. 79, 102 P. 1075.

### **Not a Local or Special Law.**

Colo. St. 1902, c. 3, is not repugnant to the constitutional prohibition against local or special laws. The court decides that the imposition of a succession tax does not change the law of descent but that the laying of the tax merely casts upon the devolution of property a burden that was not borne before. *In re Magnes*, 23 Colo. 527, 77 P. 853.

### **Uniformity. — Nature of Tax. — Succession Not a Natural Right.**

The Colorado inheritance tax law, St. 1902, c. 3, s. 21 *et seq.*, is not void on the ground that it lacks uniformity as the Colorado



Constitution, article 10, section 3, applies only to taxes upon property and the inheritance tax is not one on the property but on the succession, and furthermore a right to take property by devise or descent is a creature of the law and not a natural right; and therefore the authority which confers it may impose conditions upon it. *In re Magnes*, 32 Colo. 527, 77 P. 853.

The Colorado inheritance tax of 1902, c. 3, s. 21, is not a tax upon the property but is a tax or excise upon the power or right of receiving property by a will or under intestate laws. *In re Macky*, 46 Colo. 79, 102 P. 1075.

"The right to impose such [inheritance] tax is based upon the power of the state in its sovereign capacity to regulate and control the transmission of property by inheritance. Although designated as a tax, it is not such a tax upon property as is contemplated by section 3 of article 10 of the state constitution. It is rather a contribution which the state levies for itself as a condition upon which the title to property shall pass upon the death of its owner." *In re Inheritance Tax*, 23 Colo. 492, 493, 48 P. 535.

#### **A Tax on Beneficiaries.**

The Colorado statute of 1902 imposes a tax on the right to receive and not on the right to give, on the beneficiary rather than the estate of the decedent. *In re Macky*, 46 Colo. 79, 102 P. 1075.

**The exemptions apply to the amount taken by each beneficiary** and not to the amount of the whole estate of the deceased. The tax is levied on the receipt of some beneficial interest and the expression "such estate" relates to this beneficial interest and not to the whole estate. *People v. Koenig*, 37 Colo. 283, 85 P. 1129.

The court quotes as sustaining its doctrine *Howell's Estate*, 147 Pa. St. 164, 23 A. 403; *Matter of Cager*, 111 N. Y. 343, 18 N. E. 866; *State v. Hamlin*, 86 Me. 495, 30 A. 76, 25 L. R. A. 632, 41 Am. St. Rep. 569; *Knowlton v. Moore*, 178 U. S. 41, 20 Sup. Ct. 747, 44 L. Ed. 969. In the Pennsylvania case a peculiar provision of the statute led to an opposite result to that in the other cases. *People v. Koenig*, 37 Colo. 283, 85 P. 1129.

**An implied exemption from taxation should be allowed to state institutions** as laying a tax upon them would in the end produce no net revenue. And bequests to a state and county for a hospital and to the regent of the state university for an auditorium are not subject to the state inheritance tax. *In re Macky*, 46 Colo. 79, 102 P. 1075.

**Compromise with "Heirs."**

Where a son contested a will of his father and to settle his contest he was paid a sum in excess of the legacy provided by the will, this sum is subject to taxation. The money was paid to him by virtue of his heirship because he was the son of the decedent. *People v. Rice*, 40 Colo. 508, 91 P. 33.

Section 22 provides that life estates shall be exempt; and property shall be appraised after the death of the owner; and imposes a lien on property.

**Colo. St. 1902, c. 3.**

S. 23. All taxes imposed by this act, unless otherwise herein provided for, shall be due and payable at the death of the decedent, and interest at the rate of six per cent per annum shall be charged and collected thereon for such time as said taxes are not paid; Provided, that if said tax is paid within six months from the accruing thereof, interest shall not be charged or collected thereon, but a discount of five per cent shall be allowed and deducted from said tax, and in all cases where the executors, administrators or trustees do not pay such tax within one year from the death of the decedent, they shall be required to give a bond in the form and to the effect prescribed in section twenty-two of this act for the payment of said tax, together with interest.

*"If said tax is paid within six months . . . interest shall not be charged."*

This proviso does not have the effect of rendering the interest charged a penalty, but it is only the usual inducement held out to make those interested in estates pay their taxes promptly and cannot be considered as fixing a time when the tax becomes delinquent after which a penalty is imposed for non-payment. *People v. Rice*, 40 Colo. 508, 91 P. 33.

*"Interest . . . for such time as said taxes are not paid."*

The interest is chargeable although the estate for a long time was involved in litigation and it was impossible to say at what rate the tax should be paid if at all, as it was impossible to say what the value of the estate was; and although a contest was made against the will which lasted more than six months after the death of the decedent, and although claims against the estate were made which if successful would have made the estate insolvent. *People v. Rice*, 40 Colo. 508, 91 P. 33.

Sections 24 to 30 contain various provisions as to collection and payment of the tax.

Sections 31 and 32 cover appraisal.

Sections 33 to 41 cover jurisdiction of the courts and various provisions as to collection and payment of the tax.

### THE AMENDMENTS OF 1907 AND 1909.

Colo. St. 1907, c. 214, approved April 9, 1907, amends section 30 of Colo. St. 1902, c. 3, by providing elaborate provisions as to the refund of taxes erroneously paid.

Colo. St. 1909, c. 193, p. 460, approved April 17, 1909, amends Colo. St. 1902, ss. 21, 22, 29, 31 and 41.

### Statute not Retroactive.

Colo. St. 1909, c. 193.

S. 6. This act shall affect only the estates of decedents dying after its passage and estates of all decedents dead before its passage shall be taxed under previously existing law.

### THE PRESENT ACT.

Colo. St. 1902, c. 3 (as amended).

#### Rates and Exemptions.

S. 1. All property, real, personal and mixed, which shall pass by will or by the intestate laws of this state from any person who may die seized or possessed of the same while a resident of this state, or if decedent was not a resident of this state at the time of his death, which property or any part thereof shall be within this state, or any interest therein or income therefrom, which shall be transferred by deed, grant, sale or gift made in contemplation of the death of the grantor or bargainor, or intended to take effect, in possession or enjoyment after such death, to any person or persons, or to any body politic or corporate, in trust or otherwise, or by reason whereof any person or body politic or corporate shall become beneficially entitled in possession or expectation to any property or income thereof, shall be and is, subject to a tax at the rate hereinafter specified to be paid to the treasurer of the proper county for the use of the state, and all heirs, legatees and devisees, administrators, executors and trustees shall be liable for any and all such taxes until the same shall have been paid as hereinafter directed. Whenever the beneficial interest to any property or income therefrom shall pass to or for the use of any father, mother, husband, wife, child, brother, sister, wife or widow of the son, or the husband of the daughter, or any child or children adopted as such in conformity with the laws of the state of Colorado, or to any person to whom the deceased, for not less than ten years prior to death, stood in the acknowledged relation of a parent, or to any lineal descendant born in lawful wedlock, in every such case the rate of tax shall be two dollars on every hundred dollars of the clear market value of such property received by each person, and at and after the same rate for every less amount; Provided, that the sum of ten thousand dollars (\$10,000) of any such estate, vesting in the grantee in perpetuity shall not be subject to any such duty or tax, and that only the amount in excess of ten

thousand dollars (\$10,000) shall be subject to the above duty or tax. When the beneficial interests to any property or income therefrom shall pass to or fro (for) the use of any uncle, aunt, niece, nephew, or any lineal descendant of the same, in every such case the rate of such tax shall be three dollars on every one hundred dollars of the clear market value of such property received by each person. In all other cases the rate shall be as follows: On each and every hundred dollars of the clear market value of all property and at the same rate for any less amount; on all estates of ten thousand dollars and less, three dollars; on all estates of over ten thousand dollars and not exceeding twenty thousand dollars, four dollars; on all estates over twenty thousand dollars and not exceeding fifty thousand dollars, five dollars, and on all estates over fifty thousand dollars, and not exceeding five hundred thousand dollars, six dollars, and on all estates over five hundred thousand dollars, ten dollars; Provided, that an estate in the above case which may be valued at a less sum than five hundred dollars shall not be subject to any such duty or tax; Provided, that the following classes of property shall be exempt from the inheritance tax, to wit: All property devised, bequeathed or descending by deed in contemplation of death to the state of Colorado, or to any county, city, town, and any other municipality, or for the use of public libraries, for religious or charitable purposes exclusively, or for schools and colleges not for profit.

(L. of '02, p. 49, s. 21; R. S. '08, s. 5551, as amended by Statute of '09, s. 1.)

[See notes to the Act of 1902, *ante*, p. 349.]

#### **When Remainder Assessed.**

S. 2. When any person shall bequeath or devise any property or interest therein or income therefrom to mother, father, husband, wife, brother, sister, the widow of the son, husband of the daughter, or a lineal descendant during the life or for a term of years and remainder to the collateral heir of the descendant (decedent) or to the stranger in blood or to the body politic or corporate at their decease, or on the expiration of such term, the property so passing shall be appraised immediately after the death at what was the fair market value thereof at the time of the death of the decedent in the manner hereinafter provided, and the tax prescribed by this act on the estate of the deceased shall be immediately due and payable to the treasurer of the proper county, and, together with the interest thereon, shall be and remain a lien on said property until the same is paid.

(L. of '02, p. 50, s. 22; R. S. '08, s. 5552, as amended by Statute of '09, s. 2.)

#### **Accrual — Interest.**

S. 3. All taxes imposed by this act, unless otherwise herein provided for shall be due and payable at the death of the decedent, and interest at the rate of six per cent per annum shall be charged and collected thereon for such time as said taxes are not paid; Provided, that if said tax is paid within six months from the accruing thereof, interest shall not be charged or collected thereon, but a discount of five per cent shall be allowed and deducted from said tax, and in all cases where the executors, administrators or trustees do not pay such tax within one year from the death of the decedent, they shall be required to give a bond in the form and to the effect prescribed in section twenty-two of this act for the payment of said tax, together with interest.

(L. '02, p. 51, s. 23; R. S. '08, s. 5553.)

(Section 22 referred to is section 2 above as it stood in Laws of '02.)

[See notes to the Act of 1902, *ante*, p. 351.]

**Deduction of Tax.**

S. 4. Any administrator, executor or trustee having any charge or trust in legacies or property for distribution subject to the said tax shall deduct the tax therefrom, or if the legacy or property be not money he shall collect a tax thereon upon the appraised value thereof from the legatee or person entitled to such property, and he shall not deliver or be compelled to deliver any specific legacy or property subject to tax to any person until he shall have collected the tax thereon, and whenever any such legacy shall be charged upon or payable out of real estate, the executor, administrator or trustee, before paying the same shall deduct said tax therefrom and pay the same to the county treasurer for the use of the state, and the same shall remain a charge on such real estate until paid, and the payment thereof shall be enforced by the executor, administrator or trustee in the same manner that the said payment of said legacies might be enforced; if, however, such legacy be given in money to any person for a limited period, he shall retain the tax upon the whole amount, but if it be not in money, he shall make application to the court having jurisdiction of his accounts to make an apportionment, if the case requires it, of the sum to be paid into his hands by such legatees, and for such further order relative thereto as the case may require.

(L. '02, p. 51, s. 24; R. S. '08, s. 5554.)

**Power of Sale.**

S. 5. All executors, administrators and trustees shall have full power to sell so much of the property of the decedent as will enable them to pay said tax, in the same manner as they may be enabled to do by law, for the payment of debts of their testators and intestates, and the amount of said tax shall be paid as hereinafter directed.

(L. of '02, p. 52, s. 25; R. S. '08, s. 5555.)

**Payment and Receipts.**

S. 6. Every sum of money retained by any executor, administrator or trustee, or paid into his hands for any tax on any property, shall be paid by him within thirty days thereafter to the treasurer of the proper county, and the said treasurer or treasurers shall give, and every executor, administrator or trustee shall take, duplicate receipts from him of said payments, one of which receipts he shall immediately send to the state treasurer, whose duty it shall be to charge the treasurer so receiving the tax with the amount thereof, and shall seal said receipt with the seal of his office and countersign the same and return it to the executor, administrator or trustee, whereupon it shall be a proper voucher in the settlement of his accounts, but the executor, administrator or trustee shall not be entitled to credit in his accounts or be discharged from liability for such tax unless he shall produce a receipt so sealed and countersigned by the treasurer and a copy thereof certified by him.

(L. of '02, p. 52, s. 26; R. S. '08, s. 5556.)

**Information as to Real Estate.**

S. 7. Whenever any of the real estate of which any decedent may die seized shall pass to any body politic or corporate, or to any person or persons, or in trust for them, or some of them, it shall be the duty of the executor, administrator or trustee of such decedent to give information thereof in writing to the treasurer of the county where said real estate is situated, within six months after they

undertake the execution of their duties, or if the fact be not known to them within that period, then within one month after the same shall have come to their knowledge.

(L. of '02, p. 53, s. 27; R. S. '08, s. 5557.)

#### **Refund.**

S. 8. Whenever debts shall be proved against the estate of the decedent after distribution of legacies from which the inheritance tax has been deducted in compliance with this act, and the legatee is required to refund any portion of the legacy, a due proportion of the said tax shall be repaid to him by the executor or administrator, if the said tax has not been paid into the state or county treasury, or by the county treasurer if it has been so paid.

(L. of '02, p. 53, s. 28; R. S. '08, s. 5558.)

#### **Foreign Fiduciaries.**

S. 9. If a foreign executor, administrator or trustee, shall assign or transfer any stock or obligations in this state standing in the name of a decedent, or in trust for a decedent, liable to any such tax, the tax shall be paid to the treasurer of the proper county on the transfer thereof. No safe deposit company, bank or other institution, person or persons, holding or controlling the transfer of securities or assets of a decedent, resident or non-resident, including the shares of capital stock of, or other interest in, such institution shall deliver or transfer the same to the executors, administrators, or legal representatives of the decedent, or upon their order or request, unless notice in writing of the time and place of such intended transfer be served upon the said appraiser of the proper district and the attorney general of the state at least ten days prior to the said transfer; Nor shall any such safe deposit company, bank or other institution, person or persons, deliver or transfer any securities or assets of the estate of a non-resident decedent without retaining a sufficient portion or amount thereof to pay any tax and interest which may be due or thereafter be assessed on account of the transfer of such securities or assets under the provisions of this article, unless the attorney general consents thereto in writing. And it shall be lawful for the said appraiser (appraiser) or attorney general to examine said securities or assets at the time of such delivery or transfer. Failure to serve such notice or to allow such examination or to retain a sufficient portion or amount to pay such tax and interest as herein provided, shall render such safe deposit company, trust company, bank or other institution, person or persons, liable to the payment of the tax and interest due upon said securities or assets, in pursuance of the provisions (provisions) of this article.

(L. '02, p. 53, s. 29; R. S. '08, s. 5559, as amended by Statute of '09, s. 3.)

#### **Refund.**

S. 10. When any amount of said tax has been paid or shall have been paid erroneously to the state treasurer, it shall be lawful for, and be the duty of the state auditor, upon certificate of any county treasurer, who collected same, and of the state treasurer, and of the judge of the court, which ordered the payment of any such erroneous tax (which said last certificate shall designate the amount erroneously paid by each person paying same), to draw a warrant on the state treasurer, payable to the executor, administrator or trustee, person or persons, who may have paid any such tax in error, or to the heirs-at-law or person or



persons legally entitled thereto, the amount of such tax so erroneously paid, and it shall be the duty of the state treasurer, upon presentation of any such warrant to pay the same.

It shall also be the duty of any county treasurer to whom any inheritance tax has been erroneously paid, and to whom a commission or other allowance has been paid for collecting same, upon certificate of the judge of the court under seal of the court which ordered the payment of any such erroneous tax being filed with him, showing in what amount the payment of any such inheritance tax was erroneous, to refund and repay to the executor, administrator or trustee, person or persons who may have paid any amount of such tax in error, or to the heirs-at-law or person or persons legally entitled thereto, the amount of commission or fees charged by such county treasurer for collecting the amount so erroneously paid.

Provided, that all applications for the repayment of said tax erroneously paid and for said treasurer's commission, shall be made within two years from the date of said payment.

This section as hereby amended shall apply to all erroneous payments of inheritance tax heretofore made, as well as to those which may hereafter be made.

(L. of '02, p. 53, s. 30, as amended by L. of '07, p. 554, s. 1; R. S. '08, s. 5560.)

The third paragraph is a statute of limitations. Report of Attorney General, 1907-08, p. 88.

#### **Appraisers.**

S. 11. For the purpose of facilitating and properly collecting the said inheritance tax, and in order to fix the value of the property of persons, whose estates shall be subject to the payment of said tax, the said counties of the state of Colorado shall be grouped into three districts, to be known as districts number one, number two and number three, and the attorney general shall appoint one person as appraiser (appraiser) for each of these districts to serve for a period of two years; and the attorney general shall have the power of removal of any of the said appraisers for malfeasance in office or failure to perform their duties as appraisers, as hereinafter provided.

The appraiser appointed for district number one shall receive an annual salary of twenty-four hundred dollars (\$2,400.00), together with his actual and necessary traveling expenses and witness fees. The appraisers for district number two and district number three shall each receive an annual salary of eighteen hundred dollars (\$1,800.00), together with their actual and necessary traveling expenses and witness fees. The state treasurer shall pay the said salaries of the said appraisers, together with their necessary traveling expenses and witness fees monthly out of any fund in his hands or custody on account of the inheritance tax, and he shall retain out of any funds in his hands received from said inheritance tax a sufficient fund, at all times, to pay the said salaries of said appraisers, together with a sufficient fund to pay the necessary traveling expenses and witness fees of the said appraisers. The state auditor is authorized to issue a warrant upon the state treasurer, upon presentation to him of a voucher, signed by the governor and the attorney general for the amount of said salaries, and the said necessary traveling expenses and witness fees.

The counties of the state shall be and hereby are grouped, for the purpose of appointment of appraisers, the appraisement of estates and the collection of the inheritance tax into the following districts:

District Number One: Adams, Arapahoe, Cheyenne, Clear Creek, Denver, Douglas, Elbert, Gilpin, Jefferson, Kit Carson, Logan, Morgan, Phillips, Sedgwick, Washington, Weld, Yuma.

District Number Two: Archuleta, Baca, Bent, Conejos, Costilla, Custer, Dolores, El Paso, Fremont, Huerfano, Kiowa, La Plata, Las Animas, Lincoln, Mineral, Montezuma, Otero, Prowers, Pueblo, Rio Grande, Saguache, San Juan, Teller.

District Number Three: Boulder, Chaffee, Delta, Eagle, Garfield, Grand, Gunnison, Hinsdale, Lake, Larimer, Mesa, Montrose, Ouray, Park, Pitkin, Rio Blanco, Routt, San Miguel, Summit.

Each of the said appraisers shall file with the secretary of the state his oath of office, and his official bond in the penal sum of not less than one thousand dollars (\$1,000.00) nor more than twenty thousand dollars (\$20,000.00) in the discretion of the attorney general, conditioned upon the faithful performance of his duties as such appraiser, which bond shall be approved by the attorney general.

It shall be the duty of the several appraisers, as often as, or whenever the occasion may require, or upon the motion of any person interested in the estate, including the state or the county court itself, to appraise the estate of any deceased person in the county to which the appraiser is appointed, and the appraiser shall forthwith give notice by mail to all persons known to have or claim an interest in such property, and to such persons as the county judge may by order direct, of the time and place at which he will appraise such property, and at such time and place to appraise the same at a fair market value, and for that purpose the appraiser is authorized by leave of the county judge to use subpoenas for and compel (compel) the attendance of witnesses before him, and to take the evidence of such witnesses under oath concerning such property and the value thereof, and he shall make a report in duplicate thereof and of such value in writing to the county court and the attorney general showing the fair market value of all of the estate belonging to the deceased at the time of his death and the description of the same; all debts, claims, fees and commissions filed against said estate or allowed by the county court, together with all fees which have been allowed to the executor or administrator or which may be claimed by the executor or administrator for services in behalf of said estate; the names, relationship and residence of all persons receiving or claiming any of the estate of the deceased together with the names of all corporations or institutions claiming any of the estate of the deceased; a description of any property belonging to the estate of said decedent that may have been transferred by deed, grant, sale or gift made in contemplation of death of the grantor, or bargainor, or intended to take effect in possession or enjoyment after such death; a description of all estates left by the decedent, whether estates in fee, annuities, life estates or for a term of years; whether such decedent died intestate or left a will, together with the depositions of the witnesses examined and such other facts in relation thereto as the county court may by order require to be filed in the office of the clerk of said county court; and from this report the said county court shall forthwith make and order and fix the then cash value of all estates, annuities and life estates or terms of years growing out of said estate, and the tax to which



the same is liable, and shall immediately give notice by mail to all parties known to be interested therein. It shall be the duty of each of the said appraisers upon learning of the death of any person known to have or supposed to have died possessed of an estate in his district to immediately make an investigation, and to inform the attorney general and county court of the county wherein the person lived, of any information received by him respecting the estate of the deceased. Any person or persons dissatisfied (dissatisfied) with the assessment made or tax fixed by the county court of the estate of the decedent may appeal therefrom, after the fixing of the tax by the county court, to the district court of the proper county, within sixty days after the making of said assessment and the fixing of said tax, upon giving good and sufficient security to the satisfaction of the county judge to pay all costs, together with whatever taxes shall be fixed by the county court. Witnesses subpoenaed by said appraiser shall be paid such fees as now provided by law; Provided, that the appraiser may with the consent of the county court on the petition of the attorney general, call in expert witnesses, the amount of whose fees shall be determined by the county court.

(L. of '02, p. 54, s. 31; R. S. '08, s. 5561, as amended by Statute of '09, s. 4.)

#### **Appraisers to Receive no Reward from Parties Interested.**

S. 12. Any appraiser appointed by this act who shall take any fees or reward from any executor, administrator, trustee, legatee, next of kin or heir of any decedent, or from any other person liable to pay said tax or any portion thereof, shall be guilty of a misdemeanor, and upon conviction in any court having jurisdiction of misdemeanors he shall be fined not less than two hundred and fifty dollars, nor more than five hundred dollars, and imprisoned not exceeding ninety days, and in addition thereto the county judge shall dismiss him from such service.

(L. of '02, p. 55, s. 32; R. S. '08, s. 5562.)

#### **Jurisdiction of County Courts.**

S. 13. The county court in the county in which the real property is situated, of the decedent who was not a resident of the state, or in the county of which the decedent was a resident at the time of his death, shall have jurisdiction to hear and determine all questions in relation to the tax arising under the provisions of this act, and the county court first acquiring jurisdiction hereunder shall retain the same to the exclusion of every other.

(L. of '02, p. 55, s. 33; R. S. '08, s. 5563.)

#### **Process for Collection.**

S. 14. If it shall appear to the county court that any tax accruing under this act has not been paid according to law, it shall issue a summons summoning the persons interested in the property liable to the tax to appear before the court on a day certain not more than three months after the date of such summons, to show cause why said tax should not be paid. The process, practice and pleadings and the hearing and determination thereof, and the judgment in said court in such cases, shall be the same as those now provided or which may hereafter be provided in probate cases in the county courts in this state, and the fees and costs in such cases shall be the same as in probate cases in the county courts of this state.

(L. of '02, p. 55, s. 34; R. S. '08, s. 5564.)

**Prosecutions.**

S. 15. Whenever the treasurer of any county shall have reason to believe that any tax is due and unpaid under this act, after the refusal or neglect of the person interested in the property liable to pay said tax to pay the same, he shall notify the district attorney of the proper county, in writing, of such refusal to pay said tax, and the district attorney so notified, if he has proper cause to believe a tax is due and unpaid, shall prosecute the proceeding in the county court in the proper county, as provided in section 34 of this act for the enforcement and collection of such tax, and in such case said court shall allow as costs in the said case such fees to said attorney as he may deem reasonable.

(L. of '02, p. 56, s. 35; R. S. '08, s. 5565.)

[Section 34 referred to is section 14 herein.]

**Reports.**

S. 16. The county judge and county clerk of each county shall, every three months, make a statement in writing to the county treasurer of the county of the property from which or the party from whom, he has reason to believe a tax under this act is due and unpaid.

(L. of '02, p. 56, s. 36; R. S. '08, s. 5566.)

**Costs and Expenses.**

S. 17. Whenever the county judge of any county shall certify that there was probable cause for issuing a summons and taking the proceedings specified in section 34 of this act, the state treasurer shall pay or allow to the treasurer of any county all expenses incurred for service of summons and his other lawful disbursements that have not otherwise been paid.

(L. of '02, p. 56, s. 37; R. S. '08, s. 5567.)

[Section 34 referred to is section 14 herein.]

**Returns.**

S. 18. The treasurer of the state shall furnish to each county judge a book, in which he shall enter the returns made by appraisers, the cash value of annuities, life estates and terms of years and other property fixed by him, and the tax assessed thereon, and the amounts of any receipts for payments thereof filed with him, which book shall be kept in the office of the county judge as a public record.

(L. of '02, p. 56, s. 38; R. S. '08, s. 5568.)

**Payments by County Treasurer.**

S. 19. The treasurer of each county shall collect and pay the state treasurer all taxes that may be due and payable under this act, who shall give him a receipt therefor, of which collection and payment he shall make a report under oath to the state auditor on the first Mondays in March and September of each year, stating for what estate paid, and in such form and containing such particulars as the auditor may prescribe, and for all said taxes collected by him and not paid to the state treasurer by the first day of October and April of each year, he shall pay interest at the rate of ten per cent per annum.

(L. of '02, p. 56, s. 39; R. S. '08, s. 5569.)

Tax becomes revenue for fiscal period paid in, not fiscal period of death. Report of Attorney General, 1907-08, p. 103.

**Fees of County Treasurer.**

S. 20. The treasurer of each county shall be allowed to retain two per cent on all taxes paid and accounted for by him under this act, in full for his services in collecting and paying the same, to be taken as a part of his salary or fees now allowed by law, but not otherwise.

(L. of '02, p. 57, s. 40; R. S. '08, s. 5570.)

**Receipts — Lien.**

S. 21. Any person or body politic or corporate, shall, upon the payment of the sum of fifty cents, be entitled to a receipt from the county treasurer of any county, or the copy of the receipt, at his option, that may have been given by said treasurer for the payment of any tax under this act, to be sealed with the seal of his office, which receipt shall designate on what real property, if any, of which any decedent may have died seized, said tax has been paid and by whom paid, and whether or not it is in full of said tax; and said receipt may be recorded in the clerk's office of said county in which the property may be situated, in the book to be kept by said clerk for such purpose.

The lien of the inheritance tax provided herein shall continue until the said tax is settled and satisfied; Provided, that lien shall be limited to the property chargeable therewith.

(L. of '02, p. 57, s. 41; R. S. '08, s. 5571, as amended by Statute of '09, s. 5.)

Section as amended '09 applies only as indicated above. Amendment strikes out last clause of original section.

## CONNECTICUT.

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### In General.

Connecticut adopted a collateral inheritance tax in 1889 and extended it to direct heirs in 1897. The state supreme court decided that the personal property of a non-resident was not taxable under this statute, but that the law as amended in 1903 included such property. There were important revisions in 1907 and 1909, and the exemptions were extended by the statute of 1911.

The Connecticut statute is unique and commendable in that it specifically sets forth the property of non-residents which is subject to the tax. In most states the statute is silent on the subject, and as there are few authoritative decisions, the tax authorities must make their own ruling.

The retaliative provision, under which Connecticut taxes stock and registered bonds of Connecticut corporations owned by residents of states which so tax stocks and registered bonds of their own corporations when owned by Connecticut residents, is an interesting attempt to reduce double taxation and is more effective in doing so than the Massachusetts reciprocal provision.

Because the wording of the inheritance tax statute in many of the states is so ambiguous, the tax commissioner of Connecticut considers it his duty to obtain official information from the different states as to the practice which is there followed. Under date of March 16, 1911, the tax commissioner enumerates the following states as the ones whose residents must pay an inheritance tax on stock of a Connecticut corporation wherever the certificate may be: California, Colorado, Illinois, Iowa, Kansas, Maine, Massachusetts, Michigan, Minnesota, New Hampshire, New Jersey, New York, North Carolina, Oklahoma, Utah, Vermont, Washington, West Virginia, Wisconsin. It would seem that in view of the legislation of 1911, Maine and New York should be dropped from this list.

A resident of the following states must pay an inheritance tax on the registered bonds of a Connecticut corporation wherever the bonds may be: Colorado, Kansas, Michigan, New Hampshire, Oklahoma, Vermont.

Estates of residents of the states not enumerated are not required to pay a tax on Connecticut stock or registered bonds as the case may be.

Since 1908 thirteen states have been added to, and two states dropped from the Connecticut list of states taxing stock of non-residents, and three states added to the list of those taxing registered bonds.

Hon. William H. Corbin, tax commissioner of Connecticut, who has been a leader in the movement for a uniform inheritance tax, in urging that the duty of determining inheritance taxes be transferred to his office, says in his report to the 1911 legislature:—

“Under the present statute, each probate judge of Connecticut determines the amount of the inheritance tax due the state on all estates under his jurisdiction. There are one hundred and thirteen probate judges in as many probate districts in the state. With some diversity in the interpretation and application of the inheritance tax law by these judges, a quite different method of determining this tax is followed by some judges from that which obtains with others.”

#### **No Constitutional Limitations.**

The Connecticut constitution appears to contain no clause requiring uniformity of taxation or in any way limiting the legislature in inheritance taxation.

#### **List of Statutes.**

1889. Statutes of Connecticut, c. 180, pp. 106-109, inclusive.

1893.	"	"	"	c. 257, p. 406.
1897.	"	"	"	c. 201, p. 901.
1901.	"	"	"	c. 123, p. 1260.
1903.	"	"	"	c. 63, p. 42.
1905.	"	"	"	c. 256, p. 455.
1907.	"	"	"	c. 179, p. 729.
1909.	"	"	"	c. 218, p. 1161.
1911.	"	"	"	c. 204.

General Statutes of Connecticut (Revision of 1902), sections 2367-2377.  
(See also Revision of 1888, section 3872.)

#### **THE STATUTE OF 1889.**

**Conn. St. 1889, c. 180, p. 106.** Adopted June 5, 1889.

S. 1. All property within the jurisdiction of this state, and any interest therein, whether belonging to inhabitants of this state or not, and whether tangible or intangible, which shall pass by will or by the intestate laws of this state, or by deed, grant, sale, or gift made or intended to take effect in possession or enjoyment after the death of the grantor, to any person in trust or otherwise, other than to or for the use of the father, mother, husband, wife, lineal descendant, adopted

child, the lineal descendant of any adopted child, the wife or widow of a son, the husband of the daughter of a decedent, or some charitable purpose, or purpose strictly public within this state, shall be liable to a tax of five per centum of its value, above the sum of one thousand dollars, for the use of the state and all administrators, executors and trustees, and any such grantee under a conveyance made during the grantor's life shall be liable for all such taxes, with lawful interest as hereinafter provided, until the same shall have been paid as hereinafter directed.

S. 2 covers the tax on remainders.

S. 3 covers the tax on legacies to executors or trustees.

S. 4 fixes the time when the tax shall be payable as one year from the death of the testator.

Ss. 5-16 provide for the collection of the tax.

S. 17 defines the words "person," "property" and "charitable purpose."

### **Brother and Sister Exempt under the Act of 1893.**

Conn. St. 1893, c. 257, p. 406, approved July 1, 1893, exempted from the collateral inheritance tax the brother or sister of the decedent.

## **THE STATUTE OF 1897.**

### **Constitutionality.**

"Some form of death duty has been used as a mode of taxation from ancient times. When the constitution of the United States was adopted, death duties had been in use in England as well as elsewhere, and were an established mode of taxation known to the people, who, in the exercise of the sovereignty vested in them, enacted the fundamental law. The imposition of death duties must therefore have been included in the broad power of taxation granted to the legislature by the constitution. This is true of the constitution of our state. Soon after the organization of the federal government congress imposed death duties, and has used this mode of taxation at intervals until the present time. The same mode of taxation has been practiced by many of the state legislatures." And the fact that the burden of the tax falls only on persons who are legatees in estates exceeding \$10,000 or more under Conn. Gen. Sts. 1902, ss. 2367-2377, is not material to its validity. The court notices the claim that this incidental inequality in the operation of the tax is an arbitrary distinction but the court says that taxation is necessarily arbitrary; that the arbitrary selection essential to taxation is controlled by the legislative and not by judicial discretion. The Connecticut constitution did not require that the tax should be uniform or equal and the fact that the stress of the tax may fall on some more than others does not render it void.

And this is due to the mere accident of changing circumstances. The law is simply and purely an imposition of an indirect tax or duty and it is within the field where the legislature has absolute discretion. *Appeal of Nettleton*, 76 Conn. 235, 241, 56 A. 565.

The court upholds the validity of the Connecticut statute of 1897, following *Appeal of Gallup*, 76 Conn. 617, 57 A. 699, in *Appeal of Hopkins*, 77 Conn. 644, 60 A. 657.

### **Nature of Tax.**

A death duty is an exaction by the state to be collected from the property left by a deceased person while in its custody prescribed upon the occasion of his death and the consequent devolution of his property by force of its laws. *Appeal of Hopkins*, 77 Conn. 644, 649, 60 A. 657.

"There are three plans which may be followed in subjecting the estate of a deceased person to a succession tax: (1) A tax based upon the distribution of the net proceeds of a decedent's property to the persons upon whom it devolves by force of the laws of the taxing state. This plan includes in the estate subject to the tax the net proceeds of a decedent's land situate in the taxing state, and in case the decedent was domiciled in the taxing state, but not otherwise, of all his personal property. (2) A tax based upon any transfer actual or potential, of a decedent's personal property situate at his death within the taxing state, whether the net proceeds of that property pass to the decedent's beneficiaries by force of the laws of the taxing state or not. Under this plan the tax is more nearly akin to an ordinary transfer duty. (3) The inclusion in one act of a tax under each of these plans. There would seem to be no constitutional objection to the adoption of either plan. (*Blackstone v. Miller*, 188 U. S. 189, 23 Sup. Ct. 277, 47 L. Ed. 439.) Our succession tax is laid in pursuance of the first plan, and the act is framed in view of the existing law of domicile in relation to this subject." *Appeal of Gallup*, 76 Conn. 617, 621, 57 A. 699.

### **Ten Thousand Dollars Exempt.**

Conn. St. 1897, c. 201, p. 901. Approved June 1, 1897.

S. 1. So much of the estate of any deceased person as exceeds ten thousand dollars in value shall be subject to the taxes hereinafter provided.

### **Exemptions Valid.**

The exemptions of estates of less than \$10,000 are arbitrary and unequal but not unconstitutional for that reason. *Appeal of Nettleton*, 76 Conn. 235, 241, 56 A. 565. [Reported more fully, *ante*, p. 363.]

**Property Taxable.**

S. 2. In all such estates any property within the jurisdiction of this state, and any interest therein, whether tangible or intangible, and whether belonging to parties in this state or not, which shall pass by will or by the inheritance laws of this state, to the parent or parents, husband, wife, or lineal descendants, or legally adopted child of the deceased person, shall be liable to a tax of one-half of one per centum of its value for the use of the state and any such estate or interest therein which shall so pass to collateral kindred or to strangers to the blood or to any corporation, voluntary association, or society, shall be liable to a tax of three per centum of its value for the use of the state. And all executors and administrators shall be liable for all such taxes with interest thereon at the rate of nine per centum per annum, from the time when such taxes shall become payable until the same shall have been paid as hereinafter directed.

**"Any property within the jurisdiction of this state"** includes that residuum of the decedent's property remaining after claims of creditors and charges of administration have been satisfied. These words include land within the state belonging to any decedent and all the personal property of a decedent domiciled here, but cannot include personal property in this state which belonged to a non-resident decedent. *Appeal of Gallup*, 76 Conn. 617. 57 A. 699.

**Debts and Expenses Deducted.**

The direction to the administrator to pay the duty implies that it is to be paid from the property or from the proceeds of the property of the decedent not applied to the satisfaction of the debts and administration expenses. *Appeal of Hopkins*, 77 Conn. 644, 60 A. 657.

**Real and Personal Property. — Property of Non-Residents.**

The Connecticut statute of 1897 "is framed upon established principles and is adapted to avoid the peculiar difficulties and to meet with fairness the interstate obligations attending the imposition of death duties."

Conn. Gen. Sts. 1902, ss. 2367-2377, imposing a succession tax on any property within the jurisdiction, apply to land in Connecticut belonging to any person and to personal property of residents of Connecticut wherever situated, but not to personal property of non-residents.

"This view of the legislative purpose is strengthened by an examination of the amendment passed in 1903. (Public Acts of 1903, p. 42.) The legislature amends section 2368 by striking out the words "by the inheritance laws of this state," and inserting in lieu thereof the words "by inheritance." Having thus removed the bar erected



by the original act, against the use of any of its provisions for imposing a transfer tax on personal property of non-residents, it proceeds to authorize such a transfer tax and to prescribe the machinery for its collection, coupling this, however, with instructions to the treasurer not to collect such transfer tax in any case where the decedent resided in a state which does not collect transfer or succession taxes from personal property therein "belonging to the estates of Connecticut decedents. The amendment recognizes the justice of the scheme adopted in the original act, and attempts its modification only so far as may be necessary to add to the force of example the influences of reciprocity." *Per Hammersley, J.*, in *In re Gallup*, 76 Conn. 617, 627, 57 A. 699.

S. 3 covers the duties of the probate court as to appraisal and inventory.

### **Inventory of Property of Non-Residents.**

The fact that the main portion of the assets has been distributed through ancillary administration in New York does not prevent the court from ordering an inventory of that property to be filed for the purpose of taxation in Connecticut. *Appeal of Hopkins*, 77 Conn. 644, 655, 60 A. 657.

Under Conn. St. 1897, it was proper for the probate court to order the administrator to file an inventory and appraisal including all the personal property wherever situated although the administrator could not be held liable upon his final account for the value of personal property without the state of which it has been impossible for him to procure possession. *Appeal of Bridgeport Trust Co.*, 77 Conn. 657, 60 A. 662.

### **Computation of Tax.**

Where the statute of 1897 contains no express direction as to who shall compute the tax or the manner of computation the duty is implied in the court of probate. The tax should be computed by the jurisdiction of the domicile notwithstanding ancillary probate may be also necessary as to property existing outside of the domicile. *Appeal of Hopkins*, 77 Conn. 644, 60 A. 657.

S. 4 provides for the payment of the tax.

S. 5 covers taxes on annuitants or life tenants.

Ss. 6 to 10 provide for the collection of the tax.

S. 11 extends the tax to transfers of real or personal estate to take effect upon the death of the grantor or donor.

**Repeal.**

S. 12. Chapter 180 of the public acts of 1889 and chapter 257 of the public acts of 1893 are hereby repealed, but this act shall not apply to estates of any persons deceased before the passage hereof, but the estates of such persons shall be subject to the provisions of the said chapter 180 of the public acts of 1889, and chapter 257 of the public acts of 1893.

**Gifts for Art Exempted in 1901.**

Conn. St. 1901, c. 123, approved June 10, 1901, exempts from the inheritance tax gifts which have been or may be made by will to any corporation or institution located in the state for free exhibition and preservation for the benefit of the public of works of art or articles of beauty or interest.

**Tax Extended to Non-Residents in 1903.**

Conn. St. 1903, c. 63, s. 1. Approved May 6, 1903.

Section 2368 of the general statutes is hereby amended by striking out in line four the words "by the inheritance laws of this state" and inserting in lieu thereof the words "by inheritance," so that said section when amended shall read as follows: In all such estates any property within the jurisdiction of this state, and any interest therein, whether tangible or intangible, and whether belonging to parties in this state or not, which shall pass by will or by inheritance to the parent or parents, husband, wife, or lineal descendants, or legally adopted child of the deceased person, shall be liable to a tax of one-half of one per centum of its value for the use of the state; and any such estate or interest therein which shall so pass to collateral kindred, or to strangers to the blood, or to any corporation, voluntary association, or society, shall be liable to a tax of three per centum of its value for the use of the state. All executors and administrators shall be liable for all such taxes, with interest thereon at the rate of nine per centum per annum from the time when said taxes shall become payable until the same shall have been paid as hereinafter directed.

As to the purpose and effect of this amendment see *Appeal of Gallup*, 76 Conn. 617, 57 A. 699, treated at p. 365, *supra*.

Conn. St. 1905, approved July 19, 1905, c. 256, p. 455, amends Conn. St. 1903, c. 63, s. 2. The statute provides that no property shall be delivered to an executor appointed under the laws of another state except after notice to the tax commissioner and the payment of the tax, and it provides for the valuation of the property where no ancillary administration is taken out.

**THE STATUTE OF 1907.**

Conn. St. 1907, c. 179, p. 729. Approved July 10, 1907.

S. 1. The provisions of section 2368 of the general statutes as amended by section one of chapter 63 of the public acts of 1903 shall apply to the following

property belonging to deceased persons, non-residents of this state, which shall pass by will or inheritance under the laws of any other state or country, and such property shall be subject to the tax prescribed in said section: All real estate and tangible personal property, including moneys on deposit, within this state; all intangible personal property, including bonds, securities, shares of stock, and choses in action the evidences of ownership of which shall be actually within this state; shares of the capital stock or registered bonds of all corporations organized and existing under the laws of this state the certificates of which stock or which bonds shall be without this state, where the laws of the state or country in which such decedent resided shall, at the time of his decease, impose a succession, inheritance, transfer, or similar tax upon the shares of the capital stock or registered bonds of all corporations organized or existing under the laws of such state or country, held under such conditions at their decease by residents of this state.

S. 2 provides for notice by the probate court to the state treasurer.

S. 3 provides that no executor, administrator or trustee appointed under the laws of any other jurisdiction, shall assign, transfer or take possession of any property in Connecticut of a non-resident decedent until the inheritance tax shall have been paid.

S. 4 prohibits the transfer of property to a foreign executor, administrator or trustee without giving notice to the tax commissioner and retaining a sufficient amount of property to pay the tax, and provides for a penalty for failure to observe these requirements.

S. 5 provides that the tax commissioner may assess the tax and give notice to the state treasurer, with right of appeal to the probate court.

S. 6 repeals the statute of 1903, c. 63, as amended by the statute of 1905, c. 256.

### THE STATUTE OF 1909.

Conn. St. 1909, c. 218, p. 1161, approved August 11, 1909, amends General Statutes, sections 2367, 2368, 2371, 2376 and 305.

Conn. St. 1909, c. 218, p. 1161, s. 5, provides for the taxation of the exercise of the power of appointment.

### THE PRESENT ACT.

#### Connecticut General Statutes of 1902 as Amended.

##### Will Proved Without This State, How Proved in This State.

S. 305. When a will conveying property situated in this state has been proved and established out of this state, in and by a court of competent jurisdiction, the executor of said will, or any person interested in said property, may produce to the court of probate in the district in which any of said property is situated a duly authenticated and exemplified copy of such will, and of the record of the proceedings proving and establishing the same, and request that such copies be filed and recorded, which request shall be accompanied by a full and correct statement in writing of all property and estate of the decedent in this state; and if, upon due hearing had after public notice and such citation as said court shall order, no sufficient objection be shown, said court shall order said copies to be filed and

recorded, and they shall thereupon become part of the files and records of said court, and shall have the same effect upon the property so conveyed as if said will had been originally proved and established in said court of probate, but nothing in this chapter shall give effect to a will made in this state by an inhabitant thereof which is not executed according to the laws of this state. All property so passing shall be subject to all laws of this state relative to inheritances and successions.

[See notes to the Acts of 1897 and 1903, *ante*, pp. 363, 367.]

#### **Succession Tax.**

S. 2367. The estate of every deceased person to the amount of ten thousand dollars, when said estate shall pass to the parent or parents, lineal descendants, legally adopted child, lineal descendants of any legally adopted child, the wife or widow of a son, whether such son was born in wedlock or adopted, the husband of a daughter, whether such daughter was born in wedlock or adopted, or the brother or sister of the decedent, and, in addition to said amount, all gifts of paintings, pictures, books, engravings, bronzes, curios, bric-a-brac, arms, and armor, and collections of articles of beauty or interest, made by will to any corporation or institution located in this state for free exhibition and preservation for public benefit; also, in addition to said amount, every devise, bequest or inheritance not exceeding five hundred dollars in amount or appraised value passing to other kindred or strangers to the blood, or to a corporation, voluntary association or society shall be exempt from the payment of any succession tax; and, subject to such exemption, the estate of every deceased person shall be subject to the tax in section 2368 provided. When a portion of the property passes to or for the use of the parent or parents, husband, wife, lineal descendants, legally adopted child, lineal descendants of any legally adopted child, the wife or widow of a son, whether such son was born in wedlock or adopted, the husband of a daughter, whether such daughter was born in wedlock or adopted, or the brother or sister of the decedent, and the remaining portion to other collateral kindred or strangers to the blood, or to a corporation, voluntary association, or society, the amount exempted from taxation shall be that proportion of ten thousand dollars which the value of the property passing to those persons mentioned in the first class bears to the total value of the whole estate. The amount of the property of estates of non-resident decedents which shall be exempt from the payment of a succession tax shall be only that proportion of the whole exempted amount which is provided for the estates of resident decedents which the amount of the estate of the non-resident which is actually or constructively in this state bears to the total value of the non-resident decedent's estate wherever situated. [As amended in 1911.]

[See notes to the Act of 1897, p. 363 *et seq.*]

#### **Succession Tax for Different Classes. — Executors Liable. — Interest.**

S. 2368. In all such estates any property within the jurisdiction of this state, and any interest therein, whether tangible or intangible, and whether belonging to parties in this state or not, which shall pass by will or by inheritance or by other statutes to the parent or parents, husband, wife, or lineal descendants, or legally adopted child of the deceased person, shall be liable to a tax of one per centum of its value for the use of the state; and any such estate or interest therein which shall so pass to collateral kindred, or to strangers to the blood, or

to any corporation, voluntary association, or society, shall be liable to a tax of five per centum of its value for the use of the state. All executors and administrators shall be liable for all such taxes, with interest thereon at the rate of nine per centum per annum from the time when said taxes shall become payable until the same shall have been paid as hereinafter directed.

[See notes to the Act of 1897, *ante*, p. 363 *et seq.*]

#### **Classes of Property of Non-residents to Which Tax Applies.**

The provisions of section 2368 of the general statutes as amended by section one of chapter 63 of the public acts of 1903 shall apply to the following property belonging to deceased persons, non-residents of this state, which shall pass by will or inheritance under the laws of any other state or country, and such property shall be subject to the tax prescribed in said section: All real estate and tangible personal property, including moneys on deposit, within this state; all intangible personal property, including bonds, securities, shares of stock, and choses in action, the evidences of ownership of which shall be actually within this state; shares of the capital stock or registered bonds of all corporations organized and existing under the laws of this state, the certificates of which stock or which bonds shall be without this state, where the laws of the state or country in which such decedent resided shall, at the time of his decease, impose a succession, inheritance, transfer, or similar tax upon the shares of the capital stock or registered bonds of all corporations organized or existing under the laws of such state or country, held under such conditions at their decease by residents of this state.

#### **Non-residents; Notice to State Treasurer and to Tax Commissioner. — Appeal.**

Whenever ancillary administration has been taken out in this state on the estate of any non-resident decedent having property subject to said tax under the provisions of section one of this act, the court of probate having jurisdiction shall have the same powers in relation to such tax and shall give the same notice to the state treasurer of all hearings relating thereto as is required in the case of the estates of resident decedents, and with the same right of appeal. The provisions of this act concerning notice to the tax commissioner shall not apply to cases where ancillary administration has been taken out in this state upon the estates of non-resident decedents.

#### **Possession Not to be Given Until Payment of Tax.**

Where ancillary administration has not been taken out in this state on the estate of a non-resident decedent, including any property within the provisions of section one of this act, no executor, administrator, or trustee appointed under the laws of any other jurisdiction shall assign, transfer or take possession of any such property standing in the name or belonging to the estate of, or held in trust for, such decedent until the tax prescribed in section 2368 as amended shall have been paid to the state treasurer or retained as hereinafter provided.

#### **Foreign Executors; Transfer of Property; Notice to Tax Commissioner. — Penalty.**

No corporation or person in this state having possession of or control over any such property, including any corporation, any shares of the capital stock of which may be subject to said tax, shall deliver or transfer the same to such foreign

executor, administrator, or trustee, or to the legal representatives of such decedent, or upon their order or request, unless notice of the time and place of such intended delivery or transfer be mailed to the tax commissioner at least ten days prior to said delivery or transfer; nor shall any such corporation make any such delivery or transfer without retaining a sufficient amount of said property to pay any such tax which may be due or may thereafter become due under said section 2368 as amended, unless the said tax commissioner consents thereto in writing. Failure to mail such notice, or to allow the tax commissioner to examine said property, or to retain a sufficient amount to pay such tax shall, in the absence of the written consent of the tax commissioner, render such corporation or person liable to the payment of a penalty of three times the amount of such tax, which payment shall be enforced in an action brought in the name of the state.

**Assessment; Notice to Treasurer and Others. — Reassessment; Appeal.**

Said tax commissioner, personally or by his representative, may examine said property at the time of said delivery or transfer, and it shall be his duty, as speedily as possible after receiving notice of said property or of the intended delivery or transfer thereof, to fix the valuation of such property for the purpose of assessing such tax; and he shall assess the tax, and the amount thereof, payable on said property. Wherever a tax is assessed on such property by such tax commissioner he shall forthwith lodge with the state treasurer a statement showing such valuation with the amount of said tax, and shall give notice thereof to the person or corporation having possession of or control over said property. Any administrator or executor appointed under the laws of any other jurisdiction who is aggrieved by the valuation or assessment affixed as aforesaid by the tax commissioner, may, within twenty days after the date of the filing of the aforesaid statement with the treasurer, apply to the court of probate in any district in which any of said property so assessed is situated, which court shall have full power to cause a revaluation of all property so assessed and a reassessment of the tax thereon, to be made in the manner provided by law for the appraisal of and the assessment of the succession tax on estates of resident decedents, and subject to the same right of appeal.

[See notes to the Act of 1897, p. 366.]

**Duty of Probate Court. — Negligent Executor Removable.**

S. 2369. The court of probate having jurisdiction of the settlement of any estate shall, within ten days after the filing of a will or the application for letters of administration, if in its opinion said estate exceeds in value said sum of ten thousand dollars, send to the treasurer of the state a certificate of the filing of such will or application, and shall within ten days after the return and acceptance of the inventory and appraisal of any such estate send a certified copy of said inventory and appraisal to the treasurer of the state, together with his certificate as to the correctness in his opinion of said inventory and appraisal; and if no new appraisal is made as hereinafter provided the valuation therein given shall be taken as the basis for computing said taxes. The said court of probate shall, on the application of the treasurer of the state, or any person interested in the succession thereof and within four months after granting administration, appoint three disinterested persons who shall view and appraise such property at its actual value for the purposes of said tax, and make return thereof to said court, and on the acceptance of said return, after public notice and hearing, the valuation therein

made shall be binding upon the persons interested and upon the state. If any executor or administrator shall neglect or refuse to return an inventory and appraisal within the time now required by law, unless said time shall have been extended by said court for cause, after hearing and such notice as the court of probate may require the said court of probate may remove said executor or administrator and appoint another person administrator with the will annexed, or administrator, as the case may be.

[See notes to the Act of 1897, *ante*, p. 366.]

#### **Tax to be Paid to Treasurer of State. — Extension.**

S. 2370. All taxes imposed by section 2368 shall be paid to the treasurer of the state by the executor or administrator within fourteen months after the qualification of such executor or administrator, except as hereinafter provided. If, for any cause found by the said court of probate to be reasonable, after hearing and notice to the treasurer of the state, the executor or administrator is unable to pay said tax within the time limited, the said court of probate shall have power in its discretion to extend the time for the payment of said taxes.

#### **Estate for Life or Years, or Annuity.**

S. 2371. Where any estate or an annuity is bequeathed or devised to any person for life or any limited period, with remainder over to another or others, and all the beneficiaries are within the same class, the tax shall be computed on and paid as aforesaid out of the principal sum of property so bequeathed or devised. Where a life estate or an annuity is bequeathed or devised to a parent or parents, husband, wife or lineal descendants, or legally adopted child, and remainder over to collateral kindred, or to strangers to the blood, or to a corporation, voluntary association, or society, then the tax of one per centum shall be paid out of the principal sum or estate so bequeathed or devised for life, or constituting the fund producing said annuity, and the remaining four per centum due from collateral kindred or strangers to the blood shall be paid out of the said principal sum or estate at the expiration of the particular estate or annuity. And where a life estate or annuity is bequeathed or devised to collateral kindred or strangers to the blood, or to a corporation, voluntary association, or society, with remainder to parent or parents, husband, wife, or lineal descendants, or legally adopted child, a tax of five per centum shall be paid as aforesaid to the treasurer of the state out of the principal sum or estate, or fund producing said annuity; on the termination of said life estate or annuity the treasurer of the state shall refund and pay to the person or persons entitled to the remainder four-fifths of said tax. The said court of probate shall send to the treasurer of the state a certificate of the date of the death of said life tenant or annuitant within ten days after the same has come to its knowledge.

Where personal property was given to a life tenant the succession taxes assessed against the net value of the property as a whole are chargeable to principal. *Bishop v. Bishop*, 81 Conn. 509, 71 A. 583.

#### **Sale of Estate to Pay Tax.**

S. 2372. All administrators or executors shall have power to sell so much of the estate as will enable them to pay said tax. In case specific estate or property is bequeathed or devised to any person, unless the legatee or devisee shall pay to

the executor the amount of the tax due thereon by the provisions of section 2368, the executor shall sell said property or so much thereof as may be necessary to pay said tax and the fees and expenses of said sale.

**When Treasurer may have Administrator Appointed.**

S. 2373. In case of the neglect or refusal of any person interested to apply for letters of administration within thirty days after the death of any intestate, the treasurer of the state may apply to the court of probate having jurisdiction for the appointment of an administrator; and thereupon after hearing and public notice the said court of probate shall appoint an administrator of said estate.

**Probate Court's Jurisdiction.**

S. 2374. The court of probate having either principal or ancillary jurisdiction of the settlement of the estate of the decedent, shall have jurisdiction to hear and determine all questions in relation to said tax that may arise affecting any devise, legacy, or inheritance under section 2368, subject to appeal as in other cases, and the state treasurer shall represent the interests of the state in any such proceeding.

[See notes to the Act of 1897, *ante*, p. 365.]

S. 2375. No final settlement of the account of any executor or administrator shall be accepted or allowed by any court of probate, unless it shall show and the judge of said court shall find, that all taxes imposed by the provisions of section 2368 upon any property or interest belonging to the estate to be settled by said account, shall have been paid, and the receipt of the treasurer of the state for such tax shall be the proper voucher for such payment. Settlement of account not allowed till tax is paid.

S. 2376. All transfers and alienations by deed, grant, or other conveyance, of real or personal estate to take effect upon the death of the grantor or donor, shall be testamentary gifts within the taxation purposes of section 2368, and all property so conveyed shall be conveyed subject to the tax imposed by said section and upon the same principles and percentages regarding the degree of relationship; and the grantee or donee of any such estate shall, upon the receipt thereof, pay to the treasurer of the state a tax of three per cent, or one-half of one per cent of the value of such property, according to his aforesaid degree of relationship to the grantor or donor, and the executor or administrator of any such grantor or donor shall at once communicate to the treasurer of the state his knowledge of any and all such conveyances. No executor, administrator, or bailee having possession of any deed, grant, conveyance, or other evidence of such transfer or alienation shall deliver the same or anything connected with the subject of such transfer or alienation until the tax aforesaid has been paid to the treasurer of the state.

**What Estates Affected by Preceding Sections.**

S. 2377. Sections 2367 to 2376, both inclusive, shall not apply to the estates of any persons deceased before June first, 1897; but the estates of all persons who died before July first, 1893, and on or after August first, 1889, shall be subject to the provisions of chapter 180 of the public acts of 1889; and the estates of all persons who died before June first, 1897, and on or after July first, 1893,



shall be subject to the provisions of said chapter 180 as modified by chapter 257 of the public acts of 1893. Said chapters 180 and 257 are continued in force for the purposes in this section expressed.

**Power of Appointment.** (Conn. St. 1909, c. 218, s. 5.)

Whenever any person or corporation shall exercise the power of appointment derived from any disposition of property made either before or after the passage of this act, all property under such appointment when made, shall be deemed to be taxable under the laws of this state in the same manner as though the property to which such appointment relates belonged absolutely to the donee of such power and had been bequeathed or devised by such donee by will; and whenever any person or corporation possessing such power of appointment so derived shall fail or omit to exercise the same within the time provided therefor, in whole or in part, the passing of such property taxable under the laws of this state shall be deemed to take place to the extent of such omission or failure, in the same manner as though the persons or corporations thereby becoming entitled to the possession or enjoyment of the property to which such power related had succeeded thereto by a will of the donee of the power failing to exercise such power, taking effect at the time of such omission or failure.

## DELAWARE.

### In General.

Delaware adopted a collateral inheritance tax in 1869. In 1883 its application was limited to strangers in blood. In 1909 the present schedule was adopted. There have been as yet no decisions construing this statute.

The exemption is \$500 and applies to individual shares. No tax is claimed on stock of Delaware corporations owned by non-residents.

### Constitutional Limitations.

#### Delaware Constitution, 1897, a. 1.

S. 9. All courts shall be open; and every man for an injury done him in his reputation, person, movable or immovable possessions, shall have remedy by the due course of law, and justice administered according to the very right of the cause and the law of the land, without sale, denial, or unreasonable delay or expense; and every action shall be tried in the county in which it shall be commenced, unless when the judges of the court in which the cause is to be tried shall determine that an impartial trial thereof cannot be had in that county. Suits may be brought against the state, according to such regulations as shall be made by law.

#### Delaware Constitution, 1897, a. 8.

S. 1. All taxes shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws, but the general assembly may by general laws exempt from taxation such property as in the opinion of the general assembly will best promote the public welfare.

### List of Statutes.

1869. Statutes of Delaware, Vol. 13, c. 390.

1871. " " " " 14, c. 21.

1871. " " " " 14, c. 24.

1877. " " " " 15, c. 337.

1883. " " " " 17, c. 8.

1883. " " " " 17, c. 11.

1909. " " " c. 229, p. 514.

Revised Code of 1852 (Revision of 1874), c. 7, p. 38.

Revised Code of 1852 (Revision of 1893), c. 7, p. 66.

Revised Statutes, 1893, pp. 66-69.

**Former Statutes.**

Del. St. 1869, v. 13, c. 390, p. 357, approved April 8, 1869, provides an inheritance tax in sections 12 to 22.

S. 12. All estates, real and personal, whatsoever, passing from any person who may die seized and possessed thereof, being in this state, or any part of such estates, or any interest therein, transferred by deed, grant, bargain, gift or sale, made or intended to take effect in possession after the death of the grantor, bargainor, devisor or donor, to any person or persons, bodies politic or corporate, in trust or otherwise, other than to or for the use of the father, mother, wife, children and lineal descendants of the grantor, bargainor, devisor, donor or intestate, shall be subject to a tax of three per centum on every hundred dollars of the clear value of such estates, and all executors and administrators shall only be discharged from liability for the amount of such tax, the payment of which they may be charged with, by paying the same for the use of this state as hereinafter directed: Provided, that no estate the value of which shall not exceed five hundred dollars shall be subject to the tax imposed by this section.

Ss. 13 to 22 provide for the payment and collection of the tax.

Del. St. 1871, Vol. 14, c. 21, p. 31, amended Del. St. 1869, Vol. 13, c. 390, p. 357, s. 12, by making the rate of tax as follows: —

“Where the successor shall be a brother or sister, or a descendant of a brother or sister of the predecessor, a tax at the rate of one per centum upon the value of the estate; where the successor shall be a brother or sister of the father or mother, or a descendant of a brother or sister of the father or mother of the predecessor, a tax at the rate of two per centum upon the value of the estate: where the successor shall be a brother or sister of the grandfather or grandmother, or a descendant of the brother or sister of the grandfather or grandmother of the predecessor, a tax at the rate of three per centum upon the value of the estate; where the successor shall be in any other degree of collateral consanguinity to the predecessor than is hereinbefore described, or shall be a stranger in blood to him, a tax at the rate of five per centum of the value of the estate: Provided, that no tax shall be levied in respect of any succession existing before or subsequent to the passage of this act, where the successor shall be the wife of the predecessor.”

Del. St. 1871, c. 24, s. 5, repeals Del. St. 1869, c. 390, except sections 12 to 22 inclusive.

Del. St. 1877, Vol. 15, c. 337, approved March 9, 1877, repealed Del. St. 1869, c. 390, s. 14, and substituted a section the effect of which was to take away from the assessor of state taxes and give to the register of wills certain duties in regard to the appraisal of real estate.

Del. St. 1883, Vol. 17, c. 8, s. 1, approved February 27, 1883, amended section 13 of the Del. St. 1869, c. 390, by striking out

the provision that executors or administrators shall pay to the register of wills three per cent of the money in their hands for distribution; and providing instead that the tax shall be paid out of the money belonging to such legatees or distributees.

Del. St. 1883, Vol. 17, c. 11, approved March 27, 1883, provided that so much of sections 12 and 13 of Del. St. 1869 as imposes succession or collateral inheritance taxes except as to strangers in blood of the predecessor be repealed.

Del. St. 1909, c. 225, was approved March 26, 1909.

## THE PRESENT ACT.

Delaware St. 1909, c. 225.

### Taxable Transfers. — Rates. — Exemptions.

S. 1. All property within the jurisdiction of this state, real and personal, and every estate and interest therein, whether belonging to inhabitants of this state or not, which shall, after the approval of this act, pass by will, or by the intestate laws of this state, or by deed, grant or gift (except in cases of a *bona fide* purchase for full consideration in money or money's worth) made or intended to take effect in possession or enjoyment after the death of the grantor or donor, to any person or persons, bodies politic or corporate, in trust or otherwise, other than to or for the use of the father, mother, grandfather, grandmother, wife, husband, child or children by birth or legal adoption, or lineal descendant, of the grantor, donor, deviser, or intestate (hereinafter called the decedent) shall be subject to taxation and pay the following taxes, that is to say: — where the successor shall be a brother or sister, or a descendant of a brother or sister of the decedent, a tax at the rate of one per centum upon the value thereof; where the successor shall be a brother or sister of the father or mother, or a descendant of a brother or sister of the father or mother of the decedent, a tax at the rate of two per centum upon the value thereof; where the successor shall be a brother or sister of the grandfather or grandmother, or a descendant of the brother or sister of the grandfather or grandmother of the decedent, a tax at the rate of three per centum upon the value thereof; where the successor shall be in any other degree of collateral consanguinity to the decedent, than is hereinbefore described, or shall be a stranger in blood to him, a tax at the rate of five per centum of the value thereof; provided that if the value of the property, estate or interest therein, passing as aforesaid to any successor, shall not exceed the sum of five hundred dollars (\$500), then and in such event the successor shall be entitled to receive the same, free and exempt from any tax imposed by the provisions of this act; and provided further that nothing in this act shall be construed to impose any tax upon any property, estate or interest therein passing to or for the use, or in trust for, charitable, educational or religious societies or institutions, or cities or towns for public improvement, or to school districts or library commissions.

### Payment of Tax. — Penalty.

S. 2. Every pecuniary legacy and every distributive share of an estate payable in this state, shall be subject to the tax prescribed in section 1 of this act, and every

executor or administrator to whom administration may be granted, before he pays any pecuniary legacy, or distributes the shares of any estate liable to the tax imposed by the preceding section, shall pay to the register of wills of the proper county, for the use of the state, that per centum of all moneys he may hold for distribution among the distributees or legatees, as is prescribed in the preceding section. The tax aforesaid shall be paid by such executor or administrator within thirteen months from the granting of letters testamentary, or of administration, and any executor or administrator neglecting or refusing to pay the said tax shall not be allowed by the register any commissions on the estate, and shall be liable, on his official bond, for the amount of the tax due the state on the funds in his hands. The exemptions prescribed in section 1 of this act shall apply to all legacies and distributive shares of estate.

#### **Appraisal.**

S. 3. The estate or interest of every person, body politic or corporate, in all real and personal property, taxable under the provisions of section 1 of this act, whether in remainder, reversion or otherwise, or in trust or otherwise, or conditioned upon the happening of a contingency or dependent upon the exercise of a discretion, or subject to a power of appointment, or otherwise, and all annuities taxable as aforesaid, shall be valued by the register of wills for the purpose of determining the amount of tax to be collected from such person, body politic, or corporate, under the provisions of this act. Where the property shall pass in trust or otherwise to one or more persons, bodies politic or corporate, for a term of years or greater estate or interest, and with remainder or reversion to one or more other persons, bodies politic, or corporate, the estate or interest of each beneficiary shall be valued separately. The register of wills referred to in this section shall be the register of wills of the county where letters testamentary or of administration have been granted on the estate of the donor, grantor, devisor or intestate from whom the property aforesaid shall have passed as set forth in section 1 of this act, but if no such letters have been granted then the said register shall be the register of wills of the county in which such property is, or is situated. Such valuation shall be made within thirteen months of the death of the donor, grantor, devisor or intestate aforesaid. The register shall give one week's notice to the parties in interest by posting the same in his office or in some other manner as he shall deem proper, of the time when he will hear any of said parties relative to such valuation. The said register shall have power to summon witnesses and take testimony relative to the valuation aforesaid.

#### **Appeal.**

In all cases there shall be an appeal from the determination of the register as to the amount of taxes to be paid under the provisions of this act, to the orphans' court of the county of said register; the said appeal must be taken to the term of the said orphans' court next following the determination of the register as to the valuation aforesaid. The decision of the said orphans' court shall be final.

The costs of the appeal shall in all cases be paid by the appellant and shall be taxed by the court against said appellant. It shall be the duty of the register to notify the attorney general or his deputy for the county of said register's jurisdiction, whenever any such appeal shall be taken and it shall be the duty of the attorney general to represent the state in person or by one of his deputies in the hearing on the appeal.

**Lien.**

Every estate and interest in real and personal property shall be charged with a lien for the amount of the taxes for which such estate or interest is liable under the provisions of this act, whether such estate or interest be held at the time the tax is determined, by the first taker thereof, his heirs, assigns or any other persons, and such a lien shall not be discharged until the tax shall be paid in full.

**Duty of Executor or Administrator to Collect Tax.**

It shall be the duty of the executor or administrator of the donor, grantor, deviser or intestate from whom any property shall pass as set forth, in section 1 of this act, to collect the taxes determined in accordance with the provisions of this section, to be due and payable on account of said property or any estate or interest therein, from the parties liable to pay said tax, or their legal representative. Such collection shall be made within thirty days after the amount of the tax has been determined in accordance with the provisions of this section, provided that the right of possession or enjoyment of the property, estate or interest taxed, shall then have accrued, otherwise such collection shall be made within thirty days after such right of possession or enjoyment shall accrue. If there shall be no executor or administrator as aforesaid at such time, it shall be the duty of the register of wills to appoint some suitable person as administrator.

**Jurisdiction of Orphans' Court.**

If the owner of any estate or interest subject to the payment of a tax under the provisions of this act shall refuse or neglect to pay said tax to the executor or administrator aforesaid, within the time prescribed for the collection thereof as hereinbefore set forth, then the executor or administrator aforesaid shall apply to the orphans' court of said county, and it shall be the duty of said court to grant an order authorizing and directing said executor or administrator to sell for cash, upon the usual notice, the said estate or interest, or so much thereof as may be necessary to pay said tax and all expenses of such sale and the commissions of the executor or administrator thereon. The said order, with the proceedings of the executor or administrator therein, shall be returned to the next term of the said orphans' court, and if the return aforesaid be approved by the court, the executor or administrator making such sale shall execute and deliver to the purchaser a deed for so much of said estate or interest as was sold, and such deed shall vest in the purchaser the title thereto.

**Legacy Charged on Land.**

Whenever any legacy taxable under the provisions of this act, is charged upon land, the holder of said land shall pay the same to the executor or administrator in order that said executor or administrator may pay the taxes due thereon.

**Property Held in Trust.**

In case any property subject to the provisions of this act shall be held in trust, it shall be the duty of the trustee to pay the taxes imposed under this act, to the executor or administrator of the donor, grantor or deviser from whom the property shall have passed as set forth in section 1 hereof, and if there shall be no such executor or administrator then said trustees shall pay the said taxes to the register of wills of the proper county.

**Executor or Administrator to File Statement within Two Months.**

It shall be the duty of every executor or administrator within two months after the granting of letters testamentary or administration, to file in the office of the register of wills of the county in which such letters have been granted, a statement in writing, setting forth a general description of every parcel of real estate in this state of which his decedent died seized, and the name of each party entitled to any estate or interest in any parcel of said real estate and the relationship, if any, of said party, to the decedent. Said statement shall be supported by the oath or affirmation of said executor or administrator that the facts there incontained are true according to his best information and belief.

**Records.**

Every such statement shall be recorded by the register of wills in a separate book to be kept by him for that purpose and which shall be known as the "Inheritance and Succession Docket," and shall be duly indexed. Whenever any parcel of real property or any estate or interest therein described in the statement of the executor or administrator aforesaid, shall be subject to tax under the provisions of this act, the register of wills shall make an entry in the docket aforesaid, of the amount of the tax determined by him as hereinbefore set forth, to be against said parcel and every estate and interest therein, and in the event of an appeal to the orphans' court as aforesaid, shall further set down in said docket the amount of the tax aforesaid as fixed by said court. When any tax as aforesaid shall be paid and discharged, the said register shall make a note thereof in the said docket.

**Duty to Examine Records. — Proceedings.**

It shall be the duty of the state treasurer from time to time to examine every such docket as aforesaid, and to notify the attorney general of any failure on the part of any register of wills or of any executor or administrator to perform the duties imposed upon them by this act. The attorney general shall thereupon take proper proceedings against the party or parties delinquent. All taxes imposed under the provisions of this act shall be for the use of the state.

**When no Executor or Administrator Tax to be Paid to Register of Wills.**

If for any cause there shall be no executor or administrator to receive a tax imposed under the provisions of this act, the party liable for said tax shall have the right to pay the same direct to the register of wills of the proper county and such payment shall operate as a discharge of said tax.

**Bond of Executor or Administrator Liable.**

S. 4. The bond of an executor or administrator shall be liable for all money he may receive for taxes, or for the proceeds of the sale of any estate or interest received by him under this act, and if any executor or administrator shall fail to perform any of the duties imposed upon him under the provisions of this act the register of wills granting the letters of administration may revoke the same, and his bond shall be liable, and the same proceedings shall be had as if his administration had been revoked for any other cause. The powers and duties of an administrator *de bonis non*, or *de bonis non* with the will annexed, shall be the same, under this act, as an executor or administrator, and he shall be subject to the same liabilities.

**Tax to be Paid to Register of Wills.**

S. 5. Every executor or administrator collecting the tax aforesaid by sale of any estate or interest as aforesaid, shall pay the tax so collected to the register of wills of the proper county.

**Receipts.**

S. 6. Every register of wills receiving any tax under the provisions of this act, shall give the person paying the same, duplicate receipts therefor, one of which shall be forwarded by the person so paying as aforesaid, to the state treasurer to be by him preserved, and either of said duplicate receipts shall be evidence in suits upon the bond of said register to recover the taxes so by him received.

**Register of Wills. — Duty. — Commission Penalties.**

S. 7. It shall be the duty of the several register of wills in the state, to make returns, under oath to the state treasurer, on the first days of January, April, July and October, in each year, or within thirty days thereafter, of all sums of money received by them as taxes under the provisions of this act, the first return to be made on the first day of July next after the passage of this act, and to pay over to said state treasurer the amounts so by them received respectively, at the time of making such returns, for which they shall be allowed a commission of one-half of one per centum on the amount so paid over, and if any register of wills shall fail to pay over, as required by this section, the state treasurer shall give notice to the attorney general of the state, whose duty it shall be to institute suit on the official bond of such register of wills, for the use of the state, to recover the amount due from such register of wills, and in such suit the amount appearing to be due, with interest thereon, and costs, shall be recovered, which recovery shall be evidence of misbehavior in office, and upon conviction thereof such register of wills shall be removed from office.

The official bond of every register of wills of this state, now or hereafter appointed, shall be deemed and held to embrace and include the faithful performance by such register of all and every the duties imposed upon him by this act. (Approved March 28, A.D. 1909.)



## DISTRICT OF COLUMBIA.

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There is no inheritance tax law in force in the District of Columbia. A bill for an inheritance tax in the District passed the House in December, 1910, but did not pass the Senate. It proposed to tax direct inheritances from \$10,000 to \$100,000, 1 per cent; \$100,000 to \$500,000, 2½ per cent; over \$500,000, 5 per cent; collateral inheritances, uniformly 5 per cent on the excess over \$3,000.

## FLORIDA.

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### In General.

Florida has no inheritance tax and has never had an inheritance tax.

#### Florida Constitution, 1885, a. 9.

S. 1. The legislature shall provide for a uniform and equal rate of taxation, and shall prescribe such regulations as shall secure a just valuation of all property both real and personal, excepting such property as may be exempted by law for municipal, educational, literary, scientific, religious or charitable purposes.

## GEORGIA.

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### In General.

Georgia has no inheritance tax and has never had an inheritance tax.

#### Georgia Constitution, 1877, a. 7, s. 2, par. 1.

All taxation shall be uniform upon the same class of subjects, and *ad valorem* on all property subject to be taxed within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws. The general assembly may, however, impose a tax upon such domestic animals, as, from their nature and habits, are destructive of other property.

## HAWAII.

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### In General.

This territory has had a collateral inheritance tax since 1892, which was extended in 1905 to direct heirs. The act was further amended in 1909.

### List of Statutes.

1892. Statutes of Hawaii, c. 106.  
1896. " " " c. 21.  
1903. " " " c. 30.  
1905. " " " c. 102.  
1909. " " " c. 66.  
1909. " " " c. 147.  
1911. " " " c. 130.  
1897. Civil Laws, sections 910-917.  
1905. Revised Laws of Hawaii, chapter 100, sections 1290-1297.

### History of Legislation.

The Hawaii enabling act does not seem to contain any particular restriction on inheritance taxes.

Hawaii St. 1896, c. 21, approved May 4, 1896, amends Hawaii St. 1892, c. 106, s. 1, which imposed a collateral inheritance tax of 5 per cent

Hawaii St. 1892, c. 106, and Hawaii St. 1896, c. 21, were codified in the Civil Laws of the Hawaiian Islands, 1897, published as c. 63, ss. 910, 917.

Hawaii St. 1903, c. 30, affirmed chapter 63 of the Civil Laws of Hawaii.

Hawaii St. 1905, Act 102, approved April 26, 1905, extended the tax to direct heirs.

Hawaii St. 1909, Act 33, approved April 8, 1909, imposing an income tax, is amended by Hawaii St. 1909, Act 66, by adding thereto the provision that the tax should not be levied or assessed upon money and the value of personal property acquired by gift or inheritance.

Hawaii St. 1909, Act 147, approved April 28, 1909, amended sections 1, 5, 12, and 25 of Act No. 102 of the Laws of 1905, relating to the inheritance tax.

**THE PRESENT ACT.****Hawaii St. 1905, No. 102, as amended.****Transfers Taxable. — Rate. — Exemptions.**

S. 1. All property which shall pass by will or by the intestate laws of this territory, from any person who may die seized or possessed of the same while a resident of this territory, or which being within this territory shall pass whether by the laws of this territory or otherwise, from any person who may so die while not a resident of this territory, or which, or any interest in or income from which shall be transferred by deed, grant, sale or gift, made in contemplation of the death of the grantor, vendor, or bargainor, or intended to take effect in possession or enjoyment after such death, to any person or persons, or to any body politic or corporate, in trust or otherwise, or by reason whereof any person or body politic or corporate shall become beneficially entitled, in possession or expectancy, to any property, or to the income thereof, shall be and is subject to a tax hereinafter provided for, to be paid to the treasurer of the territory of Hawaii as hereinafter directed, for the use of the territory; and such tax shall be and remain a lien upon the property passed or transferred until paid and all administrators, executors and trustees of every estate so transferred and the person to whom the property passes or is transferred or passed shall be liable for any and all such taxes until the same shall have been paid as hereinafter directed. The tax so imposed shall be upon the market value of such property at the rates hereinafter prescribed and only upon the excess over the exemptions hereinafter granted.

Whenever any person or corporation shall exercise a power of appointment derived from any disposition of property made either before or after the passage of this act, such appointment when made shall be deemed a transfer taxable under the provisions of this act in the same manner as though the property to which such appointment relates belonged absolutely to the donee of such power and had been bequeathed or devised by such donee by will; and whenever any person or corporation possessing such power of appointment so derived shall omit or fail to exercise the same within the time provided therefor, in whole or in part, a transfer taxable under the provisions of this act shall be deemed to take place to the extent of such omissions or failures in the same manner as though the persons or corporations thereby becoming entitled to the possession or enjoyment of the property to which such power related had succeeded thereto by a will of the donee of the power failing to exercise such power, taking effect at the time of such omission or failure.

When the beneficial interest to any property or income therefrom shall so pass to or for the use of his or her father, mother, husband, wife, child, grandchild, or any child adopted as such in conformity with the laws of the territory of Hawaii, the rate of the tax shall be two per cent of the market value of such property, received by each person, in excess of five thousand dollars; in all other cases the rate of tax shall be five per cent of the market value of such property in excess of five hundred dollars. All property so passing for which such exemption of five thousand dollars can be maintained shall not be taxable as income under the provisions of any other law.

[As amended by St. 1909, Act 147, s. 1.]

“Inheritances otherwise taxed” as exempted from the income tax include only inheritances otherwise taxed under the terri-

torial laws and not under the federal laws. *Halstead v. Pratt*, 14 Hawaii 38.

An inheritance of personal property is "acquired" within the meaning of section 3 of the income tax law when it is received, or at least when it is receivable, and not immediately upon the death of the decedent. *Halstead v. Pratt*, 14 Hawaii 38.

#### **Exemptions.**

S. 2. All property transferred to societies, corporations and institutions now or hereafter exempted by law from taxation, or to any public corporation, or to any society, corporation, institution or association of persons engaged in or devoted to any charitable, benevolent, educational, public or other like work (pecuniary profit not being its object or purpose), or to any person, society, corporation, institutions, or associations of persons in trust for or to be devoted to any charitable, benevolent, educational or public purpose, by reason whereof any such person or corporation shall become beneficially entitled, in possession or expectancy, to any such property or to the income thereof shall be exempt from this tax.

#### **Particular Estates and Remainders.**

S. 3. When any grant, gift, legacy or succession upon which a tax is imposed by section 1 of this act shall be an estate, income or interest for a term of years, or for life, or determinable upon any future or contingent event, or shall be a remainder, reversion or other expectancy, real or personal, the entire property or fund by which such estate, income or interest is supported, or of which it is a part, shall be appraised immediately after the death of the decedent, and the market value thereof determined in the manner provided in section 12 of this act, and the tax prescribed by this act shall be immediately due and payable to the treasurer of the territory, and, together with the interest thereon, shall be and remain a lien on said property until the same is paid, provided, that the person or persons, or body politic or corporate, beneficially interested in the property chargeable with said tax, may elect not to pay the same until they shall come into the actual possession or enjoyment of such property, and in that case such person or persons, or body politic or corporate, shall execute a bond to the treasurer of the territory, in a penalty of twice the amount of the tax arising upon personal estate, with such sureties as a circuit judge at chambers may approve, conditioned for the payment of said tax, and interest thereon, at such time or period as they or their representatives may come into the actual possession or enjoyment of such property, which bond shall be filed in the office of the treasurer of the territory; provided further, that such person shall make a full and verified return of such property to a circuit judge at chambers, and file the same in the office of the treasurer within one year from the death of the decedent, and within that period enter into such security, and renew the same every five years.

#### **Gift to Executors or Trustees.**

S. 4. Whenever a decedent appoints or names one or more executors or trustees and makes a bequest or devise of property to them in lieu of commissions or allowances, which otherwise would be liable to said tax, or appoints them his

residuary legatees, and said bequests, devises, or residuary legacies exceed what would be a reasonable compensation for their services, such excess over and above the exemptions herein provided for shall be liable to said tax; and the circuit judge at chambers, before whom the probate proceedings are pending, shall fix the compensation.

**When Tax Accrues. — Interest. — Appraisal.**

S. 5. All taxes imposed by this act, unless otherwise herein provided for, shall be due and payable at the death of the decedent and if the same are paid within eighteen months, no interest shall be charged and collected thereon, but if not so paid, interest at the rate of ten per centum per annum shall be charged and collected from the time said tax accrued; provided, that if said tax is paid within twelve months from the accruing thereof, a discount of five per centum shall be allowed and deducted from said tax. And in all cases where the executors, administrators or trustees do not pay such tax within eighteen months from the death of the decedent, they shall be required to give a bond in the form and to the effect prescribed in section 3 of this act for the payment of said tax, together with interest.

Provided, that nothing in this act contained shall be construed to require the collection or payment of any tax assessed or assessable against any property or interest which upon final distribution in any estate cannot be distributed to or come into the possession or enjoyment of the persons entitled thereto.

[As amended by St. 1909, Act 147, s. 2. See St. 1911, Act 130, *post*, p. 392.]

**Penalties.**

S. 6. The penalty of ten per cent per annum imposed by section 5 hereof, for the non-payment of said tax, shall not be charged in cases where, in the judgment of the court, by reason of claims made upon the estate, necessary litigation or other unavoidable cause of delay, the estate of any decedent, or a part thereof cannot be settled at the end of eighteen months from the death of the decedent; and in such cases only seven per cent per annum shall be charged upon the said tax from the expiration of said eighteen months until the cause of such delay is removed, after which ten per cent interest per annum shall again be charged until the tax is paid; but litigation to defeat the payment of the tax shall not be considered necessary litigation.

**Deduction of Tax from Gifts.**

S. 7. Any administrator, executor or trustee having in charge or trust any legacy or property for distribution, subject to the said tax, shall deduct the tax therefrom, or if the legacy or property be not money he shall collect the tax thereon upon the market value thereof, from the legatee or person entitled to such property, and he shall not deliver, or be compelled to deliver, any specific legacy or property subject to tax to any person until he shall have collected the tax thereon and whenever any such legacy shall be charged upon or payable out of real estate, the executor, administrator or trustee shall collect said tax from the distributee thereof, and the same shall remain a charge on such real estate until paid; if, however, such legacy be given in money to any person for a limited period, the executor, administrator or trustee shall retain the tax upon the whole amount; but if it be not in money he shall make application to the circuit judge, having

jurisdiction, to make an apportionment, if the case require it, of the sum to be paid into his hands by such legatees, and for such further order relative thereto as the case may require.

**Power of Sale.**

S. 8. All executors, administrators and trustees shall have full power to sell so much of the property of the decedent as will enable them to pay said tax, in the same manner as they may be enabled by law to do for the payment of debts of the estate, and the amount of said tax shall be paid as hereinafter directed.

**Payments. — Receipts.**

S. 9. Every sum of money retained by an executor, administrator or trustee or paid into his hands, for any tax on property, shall be paid by him, within thirty days thereafter, to the treasurer of the territory, and the said treasurer shall give, and every executor, administrator or trustee shall take duplicate receipts for such payment, one of which receipts said executor, administrator or trustee shall immediately file with the circuit judge having jurisdiction of the probate proceedings, whereupon it shall be a proper voucher in the settlement of his account; and an executor, administrator or trustee shall not be entitled to credits in his accounts, nor be discharged from liability for such tax, nor shall said estate be distributed, unless he shall produce a receipt so sealed and countersigned by the treasurer, or a copy thereof, certified by him, and file the same with the court aforesaid.

**Refund to Pay Debts.**

S. 10. Whenever any debts shall be proven against the estate of a decedent, after the payment of legacies or distribution of property from which the said tax has been deducted or upon which it has been paid, and a refund is made by the legatee, devisee, heir or next of kin, a proportion of the tax so deducted or paid shall be repaid to him by the executor, administrator or trustee, if the said tax has not been paid to the treasurer.

**Transfer by Foreign Executor, etc.**

S. 11. If a foreign executor, administrator or trustee shall assign or transfer any stock or obligations in this territory standing in the name of a decedent, or in trust for a decedent, liable to any such tax, the tax shall be paid to the treasurer of the territory on the transfer thereof. No safe deposit company, trustee company, corporation, bank or other institution, person or persons having in possession or under control securities, deposits or other assets of a decedent, including the shares of the capital stock of, or other interests in, the safe deposit company, trust company, corporation, bank or other institution, making the delivery or transfer herein provided, shall deliver or transfer the same to the executors, administrators or legal representatives of said decedent, or upon their order or request, unless notice of the time and place of such intended delivery or transfer be served upon the treasurer at least ten days prior to said delivery or transfer; nor shall any such safe deposit company, trust company, corporation, bank or other institution, person or persons deliver or transfer any securities, deposits or other ~~assets~~ assets of the estate of a non-resident decedent including the shares of the capital stock of, or other interests in, the safe deposit company, trust company, corporation, bank or other institution, making the delivery or transfer, without retaining a sufficient portion or amount thereof to pay any tax and penalty which may

thereafter be assessed on account of the delivery or transfer of such securities, deposits or other assets including the shares of the capital stock of or other interests in, the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer, under the provisions of this act, unless the treasurer consents thereto in writing. And it shall be lawful for the said treasurer, personally, or by representative, to examine said securities, deposits or assets at the time of such delivery or transfer. Failure to serve such notice and to allow such examination, and to retain a sufficient portion or amount to pay such tax and penalty as herein provided, shall render said safe deposit company, trust company, corporation, bank or other institution, person or persons liable to the payment of two times the amount of the tax and penalty due or thereafter to become due upon said securities, deposits or other assets, including the shares of the capital stock of, or other interests in, the safe deposit company, trust company, corporation, bank or other institution, making the delivery or transfer; and the payment as herein provided shall be enforced in an action brought in accordance with the provisions of section fifteen of this chapter.

#### **Appraisal.**

S. 12. When the value of any inheritance, devise, bequest or other interest subject to the payment of said tax is uncertain, the circuit judge before whom the probate proceedings are pending, on the application of any interested party, or upon his own motion may appoint some competent person or persons as appraisers, as often as and whenever occasion may require, whose duty it shall be forthwith to give notice, by mail, to all persons known to have, or to claim an interest in such property, to the treasurer of the territory and to such persons as the circuit judge may by order direct, of the time and place at which he will appraise such property, and at such time and place to appraise the same and make a report thereof, in writing, to said circuit judge, together with such other facts in relation thereto as said circuit judge may by order require to be filed with the clerk of said court; and from this report, or in case appraisers are not appointed, in any event the said circuit judge shall, by order, assess and fix the value of all inheritances, devises, bequests or other interests, and the tax to which the same is liable, and shall immediately cause notice thereof to be given by mail, to all persons known to be interested therein. The value of every future or contingent or limited estate, income or interest shall, for the purpose of this act, be determined by the insurance commissioner, by the rule, method and the standards of mortality and of value that are set forth in the American experience tables of mortality for ascertaining the value of policies of life insurance and annuities and for the determination of the liabilities of life insurance companies, save that the rate of interest to be assessed in computing the present value of all future interests and contingencies shall be five per centum per annum, and said commissioner shall certify such value to the appraisers or judge as the case may be. Every appraiser shall be paid on the certificate of the circuit judge at chambers at the rate of five dollars per day for every day actually and necessarily employed in such appraisal, and his actual and necessary traveling expenses at the same rate now paid for traveling expenses to witnesses subpoenaed to attend courts of record. Such fees and all other charges herein provided for shall be paid out of the estate of the decedent as an expense of administrator.

[As amended by St. 1909, Act 147, s. 3.]

[See further, s. 5, *ante*, p. 386.]

**Appraisers to Take no Reward from Parties.**

S. 13. Any appraiser appointed by virtue of this act who shall take any fee or reward from any executor, administrator, trustee, legatee, next of kin, or heir of any decedent, or from any other person liable to pay said tax, or any portion thereof, shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than two hundred and fifty dollars nor more than five hundred dollars, or imprisoned for a period of ninety days, or both.

**Jurisdiction of Court.**

S. 14. The circuit judge at chambers having jurisdiction of the decedent's estate in this territory, shall have jurisdiction to hear and determine all questions in relation to the tax arising under the provisions of this act.

**Citation.**

S. 15. If it shall appear to the circuit judge that any tax accruing under this act has not been paid according to law, he shall issue a citation, citing the persons known to own any interest in or part of the property liable to the tax or any person or corporation liable under the law for the payment of said tax to appear before him at chambers on a day certain, not more than ten weeks after the date of such citation, and show cause why said tax should not be paid.

Circuit judges acting under this law shall have power to enter and enforce all appropriate orders and decrees and all other appropriate powers that may be exercised by circuit judges at chambers whether in equity or probate.

**Duties of Treasurer.**

S. 16. Whenever the treasurer shall have reason to believe that any tax is due and unpaid under this act, after the refusal or neglect of the persons interested in the property liable to said tax to pay the same, he shall notify the attorney general of the territory, in writing, of such failure to pay such tax, and the attorney general, so notified, if he have probable cause to believe a tax is due and unpaid, shall prosecute the proceeding before the circuit judge as provided in section fifteen of this act, for the enforcement and collection of such tax.

**Record.**

S. 17. The treasurer of the territory shall furnish to each of the clerks of the several circuit courts a book, which shall be a public record and in which he shall enter the name of every decedent, upon whose estate an application has been made to the circuit judges of the several circuit courts, for the issuance of letters of administration, or letters testamentary, or ancillary letters, the date and place of death of such decedent, the estimated value of his real and personal property, the names, places or [sic] residence and relationship to him of his heirs at law, the names and places of residence of the legatees and devisees in any will of any such decedent, the amount of each legacy and the estimated value of any real property devised therein, and to whom devised. These entries shall be made from the data contained in the papers filed on any such application, or in any proceeding relating to the estate of the decedent. The clerk of the circuit court shall also enter in such book the amount of personal property of any such decedent, as shown by the inventory thereof when made and filed in his office, and the returns made by any appraiser appointed by the circuit judge, under this statute, and the



value of annuities, life estates, terms of years and other property of such decedent, or given by him in his will or otherwise, as fixed by the circuit judge, and the tax assessed thereon, and the amounts of any receipts for payment of any tax on the estate of such decedent under this statute filed with him. The clerk of the circuit court shall, on the first day of January, April, July and October of each year make a report in duplicate, upon forms to be furnished by the treasurer containing all the data and matters required to be entered in such book, and also of the property from which, or the party from which, he has reason to believe the tax under this act is due and unpaid, one of which shall be immediately delivered to the treasurer and the other transmitted to the attorney general.

#### **Expenses.**

S. 18. Whenever a circuit judge at chambers shall certify that there was probable cause for issuing a citation and taking the proceedings specified in section fifteen of this act, the treasurer shall pay, or allow all expenses incurred for services of citation, and other lawful disbursements that have not otherwise been paid.

#### **Treasurer to Collect Taxes.**

S. 19. The treasurer shall collect all taxes that may be due and payable under this act.

#### **Special Attorneys.**

S. 20. The treasurer, in his discretion, for the better furtherance of the purposes of this act, shall be allowed to employ such special attorney or attorneys as he may deem necessary, who shall have all the authority conferred upon the attorney general by sections fifteen and sixteen of this act, and such attorney shall be paid for his services reasonable fees.

#### **Receipts.**

S. 21. Any person, or body politic or corporate shall, upon payment of the sum of fifty cents, be entitled to a receipt from the treasurer, or a copy of the receipt at his option, that may have been given by said treasurer for the payment of any tax under this act, to be sealed with the seal of his office, which receipt shall designate on what real property, if any, of which any decedent may have died seized, said tax has been paid, and by whom paid, and whether or not it is in full of said tax; and said receipt may be recorded in the clerk's office of the circuit court in which such estate was probated, in a book to be kept by said clerk for such purpose, which shall be labeled "Inheritance Tax."

#### **Penalties on Officers.**

S. 22. Every officer who fails or refuses to perform, within a reasonable time, any and every duty required by the provisions of this act, or who fails or refuses to make and deliver within a reasonable time any statement or record required by this act, shall forfeit to the territory of Hawaii the sum of one thousand dollars, to be recovered in an action brought by the attorney general in the name of the territory.

**Repeal.**

S. 23. Chapter 100 of the Revised Laws of Hawaii relating to inheritance tax and all amendments thereto and all laws and parts of laws in conflict with this act are hereby expressly repealed.

**Definitions.**

S. 24. The words "estate" and "property" as used in this act shall be taken to mean the real and personal property or interest therein of the testator, intestate, grantor, bargainor, vendor or donor passing or transferred to individuals, legatees, devisees, heirs, next of kin, grantees, donees, vendees or successors and shall include all personal property within or without the territory. The word "transfer" as used in this act shall be taken to include the passing of property or any interest therein, in possession or enjoyment, present or future, by inheritance, descent, devise, succession, bequest, grant, deed, bargain, sale, gift or appointment in the manner herein described. The word "decendent" as used in this act shall include the testator, intestate, grantor, bargainor, vendor or donor.

**Actions.**

S. 25. In all cases where any tax has become or shall hereafter become a lien upon any property under or by virtue of any of the provisions of this act the attorney general may, whenever any property of said estate has been distributed without the payment to the territory of all or any part of the taxes payable on account thereof, under this act bring and prosecute an action or actions in the name of the territory as plaintiff for the purpose of enforcing such lien or liens against all or any of the property subject thereto. In any such action the owner of any property or of any interest in property against which the lien of any such tax is sought to be enforced, and any predecessor in interest of any such owner whose title or interest was derived through any such decedent by will or succession or by decree or distribution of the estate of such decedent, and any lienor or incumbrancer subsequent to the lien of such tax may be made a party defendant. The enumeration in this section of the persons who may be made defendants shall not be deemed to be exclusive; but the joinder or non-joinder of parties, except when otherwise herein provided, shall be governed by the rules in equity in similar cases.

(a) Actions may be brought against the territory for the purpose of quieting the title to any property, against the lien or claim of lien of any tax or taxes under this act, or for the purpose of having to determine that any property is not subject to any lien for taxes under this act. In any such action the plaintiffs may be any administrator or executor of the estate or will of any decedent, whether the said estate shall have been fully administered and the estate settled and closed or not, and any heir to the legatee or devisee of any such decedent, or trustee of the estate or of any part of the estate of such decedent, or distributee of the estate or of any part of the estate of any such decedent, and any assignee, grantee or successor in interest of any such persons, and all or any other persons who might be made parties defendant in any action brought by the territory under the provisions of this section, and notwithstanding that all or any of the persons enumerated in this section shall or may have assigned, granted, conveyed or otherwise parted with all or any interest in or title to the property, or any (part) thereof, involved in any such claim of lien before the commencement of such action. All or any of

the persons in this action enumerated may be joined or united as parties plaintiff. The enumeration in this section of the persons who may be made parties shall not be deemed to be exclusive, but the joinder or non-joinder of parties, except when otherwise herein provided, shall be governed by the rules in equity in similar cases. In all cases any person who might properly be a party plaintiff in any such action who refuses to join as plaintiff may be made a defendant.

(b) All actions under this section shall be triable before the circuit court of the circuit in which decedent's estate is being or has been administered.

[As amended by the Statute of 1909, Act 147, approved April 28, 1909.]

(c) Service of summons in actions brought against the territory shall be made on the attorney general, and it shall be the duty of said attorney general to defend all such actions.

(d) The procedure and practice in all actions brought under this section, except as otherwise provided in this act, shall be governed by the provisions of the Revised Laws of Hawaii in relation to civil actions, so far as the same shall or may be applicable, including all provisions relating to motions for new trials and appeals.

(e) The remedies provided in this section shall be in addition to and not exclusive of any remedies provided in the sections preceding this section.

#### **Hawaii St. 1911, Act 130.**

S. 5. All taxes imposed by this act, unless otherwise herein provided for, shall be due and payable at the death of the decedent, and if the same are paid within eighteen months, no interest shall be charged and collected thereon, but if not so paid interest at the rate of ten per cent per annum shall be charged and collected from the [date of death;] provided that if said tax is paid within twelve months from the [date of death,] a discount of five per cent shall be allowed and deducted from said tax, [and] in all cases where the executors, administrators or trustees do not pay such tax within eighteen months from [the date of] the death of the decedent, they shall be required to give a bond in the form and to the effect prescribed in section 3 of this act for the payment of said tax together with interest.

[All property, the transfer of which is subject to tax under the provisions of this act, shall be appraised at its full cash value as of the date of death. Whenever, by reason of the provisions of this act, it shall become necessary to appraise or ascertain the value of any stocks, bonds or securities, such as are customarily bought or sold in open market in the city of Honolulu or elsewhere, the value of such stocks, bonds or securities shall be ascertained by taking the price for which such stocks, bonds or securities were bought and sold upon the date of death, or if there were no sales upon such day, then by ascertaining the range of the market and the average of prices as thus found running through a reasonable period of time before and after the date of death.]

Material in brackets is new matter.

## IDAHO.

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### In General.

Idaho, in 1907, copied the present California law almost verbatim. The classification, rates of tax and exemptions are exactly as given for California prior to the amendment of 1911.

Idaho is not collecting a tax on stock of an Idaho corporation owned by a non-resident if the shares are physically outside of the state, although the statute contains the common provision holding the corporation responsible for the tax if it transfers such stock before the inheritance tax is paid.

### Constitutional Limitations.

#### Idaho Constitution, 1889, a. 7, s. 2.

The legislature shall provide such revenue as may be needful, by levying a tax by valuation, so that every person or corporation shall pay a tax in proportion to the value of his, her or its property, except as in this article hereinafter otherwise provided. The legislature may also impose a license tax (both upon natural persons and upon corporations, other than municipal, doing business in this state); also a per capita tax: Provided, the legislature may exempt a limited amount of improvements upon land from taxation.

#### Idaho Constitution, 1889, a. 8, s. 5.

All taxes shall be uniform upon the same class of subjects within the territorial limits, of the authority levying the tax, and shall be levied and collected under general laws, which shall prescribe such regulations as shall secure a just valuation for taxation of all property, real and personal: Provided, that the legislature may allow such exemptions from taxation from time to time as shall seem necessary and just, and all existing exemptions provided by the laws of the territory, shall continue until changed by the legislature of the state: Provided further, that duplicate taxation of property for the same purpose during the same year is hereby prohibited.

### List of Statutes.

1907. Statutes of Idaho, c. 78, p. 558 (approved March 16, 1907).  
Idaho Revised Codes, 1908, Vol. 1, c. 5, p. 797, ss. 1873-1897.

## THE PRESENT ACT.

### Idaho Revised Codes, Title 10, c. 5.

#### Transfers Taxable.

S. 1873. All property which shall pass, by will or by the intestate laws of this state, from any person who may die seized or possessed of the same while a resident of this state, or if such decedent was not a resident of this state at the time of death, which property or any part thereof, shall be within this state, or any interest therein, or income therefrom, which shall be transferred by deed, grant sale or gift, made in contemplation of the death of the grantor, vendor or bargainor, or intended to take effect in possession or enjoyment after such death, to any person or persons, or to any body politic or corporate, in trust or otherwise, or by reason whereof any person or body politic or corporate shall become beneficially entitled, in possession or expectancy, to any property, or to the income thereof, shall be and is subject to a tax hereinafter provided for, to be paid to the treasurer of the proper county, as hereinafter directed for the benefit of the general fund of this state to be used for all the purposes for which said fund is available. And the county treasurer shall, upon the receipt of said tax, pay the same to the state treasurer and take duplicate receipts thereof, one of which the county treasurer shall retain, and transmit the other to the state auditor and receive from him credit for the amount thereof on his account; and such tax shall be and remain a lien upon the property passed or transferred until paid, and the person to whom the property passes or is transferred, and all administrators, executors and trustees of every estate so transferred or passed, shall be liable for any and all such taxes until the same shall have been paid as hereinafter directed. The tax so imposed shall be upon the market value of such property at the rates hereinafter prescribed, and only upon the excess over the exemptions hereinafter granted.

#### Appointment Deemed a Taxable Transfer.

S. 1874. Whenever any person or corporation shall exercise a power of appointment derived from any disposition of property made either before or after the passage of this chapter, such appointment when made shall be deemed a transfer taxable under the provisions of this chapter in the same manner as though the property to which such appointment relates belonged absolutely to the donee of such power, and had been bequeathed or devised by such donee by will; and whenever any person or corporation possessing such a power of appointment so derived shall omit or fail to exercise the same within the time provided therefor, in whole or in part, a transfer taxable under the provisions of this chapter shall be deemed to take place to the extent of such omission or failure, in the same manner as though the person or corporations thereby becoming entitled to the possession or enjoyment of the property to which such power related had succeeded thereto by a will of the donee of the power failing to exercise such power, taking effect at the time of such omission or failure.

#### Rate of Tax.

S. 1875. When the property or any beneficial interest therein so passed or transferred exceeds in value the exemption hereinafter specified, and shall not exceed in value twenty-five thousand dollars, the tax hereby imposed shall be:—

1. Where the person or persons entitled to any beneficial interest in such property shall be the husband, wife, lineal issue, lineal ancestor of the decedent,

or any child adopted as such in conformity with the laws of this state, or any child to whom such decedent, for not less than ten years prior to such transfer, stood in the mutually acknowledged relation of a parent: Provided, however, such relationship began at or before the child's fifteenth birthday, and was continuous for said ten years thereafter, or any lineal issue of such adopted or mutually acknowledged child, at the rate of one per centum of the clear value of such interest in such property.

2. Where the person or persons entitled to any beneficial interest in such property shall be the brother or sister, or a descendant of a brother or sister, of the decedent, a wife or widow of a son, or the husband of a daughter of the decedent, at the rate of one and one-half per centum of the clear value of such interest in such property.

3. Where the person or persons entitled to any beneficial interest in such property shall be the brother or sister of the father or mother, or a descendant of a brother or sister of the father or mother of the decedent, at the rate of three per centum of the clear value of such interest in such property.

4. Where the person or persons entitled to any beneficial interest in such property shall be the brother or sister of the grandfather or grandmother, or a descendant of the brother or sister of the grandfather or grandmother, of the decedent, at the rate of four per centum of the clear value of such interest in such property.

5. Where the person or persons entitled to any beneficial interest in such property shall be in any other degree of collateral consanguinity than is hereinbefore stated, or shall be a stranger in blood to the decedent, or shall be a body politic or corporate, at the rate of five per centum of the clear value of such interest in such property.

#### **Progressive Rates.**

S. 1876. The foregoing rates in the preceding section are for convenience termed the primary rates. When the market value of such property or interest exceeds twenty-five thousand dollars, the rates of tax upon such excess shall be as follows:—

1. Upon all in excess of twenty-five thousand dollars and up to fifty thousand dollars, one and one-half times the primary rates;

2. Upon all in excess of fifty thousand dollars and up to one hundred thousand dollars, two times the primary rates;

3. Upon all in excess of one hundred thousand dollars and up to five hundred thousand dollars, two and one-half times the primary rates;

4. Upon all in excess of five hundred thousand dollars, three times the primary rates.

#### **Exemptions.**

S. 1877. The following exemptions from the tax are hereby allowed:—

1. All property transferred to societies, corporations and institutions now or hereafter exempted by law from taxation, or to any public corporations, or to any society, corporation, institution or association of persons engaged in or devoted to any charitable, benevolent, educational, public or other like work (pecuniary profit not being its object or purpose), or to any person, society, corporation, institution or association of persons in trust for or to be devoted to any charitable, benevolent, educational or public purpose, by reason whereof any

such person or corporation shall become beneficially entitled, in possession or expectancy, to any such property or to the income thereof shall be exempt;

2. Property of the clear value of ten thousand dollars transferred to the widow or to a minor child of the decedent, and of four thousand dollars transferred to each of the other persons described in the first subdivision of section 1875 shall be exempt;

3. Property of the clear value of two thousand dollars transferred to each of the persons described in the second subdivision of section 1875 shall be exempt;

4. Property of the clear value of one thousand five hundred dollars transferred to each of the persons described in the third subdivision of section 1875 shall be exempt;

5. Property of the clear value of one thousand dollars transferred to each of the persons described in the fourth subdivision of section 1875 shall be exempt;

6. Property of the clear value of five hundred dollars transferred to each of the persons and corporations described in the fifth subdivision of section 1875 shall be exempt.

#### **Tax on Future and Contingent Estates.**

S. 1878. When any grant, gift, legacy or succession upon which a tax is imposed by section 1873 shall be an estate, income or interest for a term of years, or for life, or determinable upon any future or contingent event, or shall be a remainder, reversion, or other expectancy, real or personal, the entire property or fund by which such estate, income or interest is supported, or of which it is a part, shall be appraised immediately after the death of the decedent, and the market value thereof determined, in the manner provided in section 1886, the tax prescribed by this chapter shall be immediately due and payable to the treasurer of the proper county, and, together with the interest thereon, shall be and remain a lien on said property until the same is paid: Provided, that the person or persons, or body politic or corporate, beneficially interested in the property chargeable with said tax, may elect not to pay the same until they shall come into the actual possession or enjoyment of such property, and in that case such person or persons or body politic or corporate, shall execute a bond to the people of the state of Idaho, in a penalty of twice the amount of the tax arising upon personal estate, with such sureties as the said probate court may approve, conditioned for the payment of said tax, and interest thereon, at such time or period as they or their representatives may come into the actual possession or enjoyment of such property, which bond shall be filed in the office of the county recorder of the proper county: Provided, further, that such person shall make a full and verified return of such property to said court, and file the same in the office of the county recorder within one year from the death of the decedent, and within that period enter into such security, and renew the same every five years.

#### **Tax on Gift to Executor.**

S. 1879. Whenever a decedent appoints or names one or more executors or trustees, and makes a bequest or devise of property to them in lieu of commissions or allowances, which otherwise would be liable to said tax, or appoints them his residuary legatees, and said bequests, devises or residuary legacies exceed what would be a reasonable compensation for their services, such excess over and above the exemptions herein provided for shall be liable to said tax; and the probate court in which the probate proceedings are pending shall fix the compensation.

**Time of Payment. — Extension. — Interest.**

S. 1880. All taxes imposed by this chapter, except as hereinafter provided, shall be due and payable at the death of the person rendering such property subject to such taxation, and interest at the same rate as is now provided by law for delinquent taxes shall be charged and collected thereon for such time as said tax is not paid: Provided, that if said tax is paid within one year from the accruing thereof, no interest shall be charged or collected thereon, and if said tax is paid within six months from the accruing thereof, a discount of five per centum shall be allowed and deducted from said tax: Provided, further, that if, by reason of claims made upon the estate, necessary litigation or other unavoidable cause of delay, the estate of the decedent or any part thereof cannot be settled up at the end of the year from his or her decease, the probate court, or the judge thereof, may make necessary extensions of time for the payment of such taxes, but no single extension shall exceed one year, and in such cases only six per centum per annum shall be charged upon the said tax from the death of the decedent to the expiration of the period for which the extension of time was granted, after which interest at the same rate as is now provided by law for delinquent taxes shall be charged and in all such cases the tax on real estate shall remain a lien on the real estate on which the same is chargeable until paid, and the executors, administrators or trustees shall give a bond, to the people of the state of Idaho, in a penalty of three times the amount of the said tax, with such sureties as the probate judge of the proper county may approve, conditioned for the payment of said tax and interest thereon at the expiration of such period, which bond shall be filed in the office of said probate judge.

**Collection of Tax by Administrator.**

S. 1881. Any administrator, executor or trustee having in charge or trust any legacy or property for distribution, subject to the said tax, shall deduct the tax therefrom, or if the legacy or property be not money, he shall collect the tax thereon, upon the market value thereof, from the legatee or person entitled to such property and he shall not deliver, or be compelled to deliver, any specific legacy or property subject to tax to any person until he shall have collected the tax thereon; and whenever any such legacy shall be charged upon, or payable out of, real estate, the executor, administrator or trustee shall collect said tax from the distributee thereof, and the same shall remain a charge on such real estate until paid: if, however, such legacy be given in money to any person for a limited period, the executor, administrator or trustee shall retain the tax upon the whole amount; but if it be not in money he shall make application to the probate court to make an apportionment, if the case requires it, of the sum to be paid into his hands by such legatees, and for such further order relative thereto as the case may require.

**Sale of Property to Pay Tax.**

S. 1882. All executors, administrators and trustees shall have full power to sell so much of the property of the decedent as will enable them to pay said tax, in the same manner as they may be enabled by law to do for the payment of debts of the estate, and the amount of said tax shall be paid as hereinafter directed.



**Payment of Tax by Administrator.**

S. 1883. Every sum of money retained by an executor, administrator or trustee, or paid into his hands, for any tax on property, shall be paid by him, within thirty days thereafter, to the treasurer of the county in which the probate proceedings are pending, and the said treasurer shall give, and every executor, administrator or trustee shall take, duplicate receipts for such payment, one of which receipts said executor, administrator or trustee shall immediately send to the state auditor, whose duty it shall be to charge the treasurer so receiving the tax with the amount thereof, and said auditor shall seal said receipt with the seal of his office, and countersign the same, and return it to the executor, administrator or trustee, whereupon it shall be a proper voucher in the settlement of his accounts; and an executor, administrator or trustee shall not be entitled to credit in his accounts, nor be discharged from liability for such tax, nor shall said estate be distributed, unless he shall produce a receipt so sealed and countersigned by the state auditor, or a copy thereof, certified by him, and file the same with the court.

**Refund of Excess Tax.**

S. 1884. Whenever any debts shall be proven against the estate of a decedent after the payment of legacies or distribution of property from which the said tax has been deducted or upon which it has been paid, and a refund is made by the legatee, devisee, heir or next of kin, a proportion of the tax so deducted or paid shall be repaid to him by the executor, administrator or trustee, if the said tax has not been paid to the county treasurer or to the state auditor, or by them, if it has been so paid.

**Collection of Tax from Non-Resident Administrator.**

S. 1885. If a foreign executor, administrator or trustee shall assign or transfer any stock or obligations in this state standing in the name of a decedent, or in trust for a decedent, liable to any such tax, the tax shall be paid to the treasurer of the proper county on the transfer thereof. No safe deposit company, trust company, corporation, bank or other institution, person or persons, having in possession or under control securities, deposits or other assets of a decedent, including the shares of the capital stock of, or other interests in, the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer herein provided, shall deliver or transfer the same to the executors, administrators, or legal representatives of said decedent, or upon their order or request, unless notice of the time and place of such intended delivery or transfer be served upon the county treasurer at least ten days prior to said delivery or transfer; nor shall any such safe deposit company, trust company, corporation, bank or other institution, person or persons, deliver or transfer any securities, deposits or other assets of the estate of a non-resident decedent including the shares of the capital stock of, or other interest in, the safe deposit company, trust company, corporation, bank or other institution, making the delivery or transfer, without retaining a sufficient portion or amount thereof to pay any tax and penalty which may thereafter be assessed on account of the delivery or transfer of such securities, deposits or other assets, including the shares of the capital stock of or other interests in the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer, under the provisions of this chapter, unless the county treasurer consents thereto in writing. And it shall be lawful for the said county treasurer, personally, or by representative, to examine said

securities, deposits or assets at the time of such delivery or transfer. Failure to serve such notice and to allow such examination, and to retain a sufficient portion or amount to pay such tax and penalty as herein provided, shall render said safe deposit company, trust company, corporation, bank or other institution, person or persons, liable to the payment of two times the amount of the tax and penalty due or thereafter to become due upon said securities, deposits or other assets, including the shares of the capital stock of, or other interests in, the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer; and the payment as herein provided shall be enforced in an action brought in accordance with the provisions of section 1891 of this chapter.

#### **Appraisal.**

S. 1886. When the value of any inheritance, devise, bequest or other interest subject to the payment of said tax is uncertain, the probate court in which the probate proceedings are pending, on the application of any interested party, or upon its own motion, shall appoint some competent person as appraiser, as often as and whenever occasion may require, whose duty it shall be forthwith to give such notice, by mail, to all persons known to have or claim an interest in such property, and to such persons as the court may by order direct, of the time and place at which he will appraise such property, and at such time and place to appraise the same and make a report thereof, in writing, to said court, together with such other facts in relation thereto as said court may by order require to be filed with the clerk of said court; and from this report the said court shall, by order, forthwith assess and fix the market value of all inheritances, devises, bequests or other interest, and the tax to which the same is liable, and shall immediately cause notice thereof to be given, by mail, to all parties known to be interested therein; and the value of every future or contingent or limited estate, income or interest shall, for the purposes of this chapter, be determined by the rule, method and standard of mortality and of value that are set forth in the actuaries' combined experience tables of mortality for ascertaining the value of policies of life insurance and annuities, and for the determination of the liabilities of life insurance companies, save that the rate of interest to be assessed in computing the present value of all future interests and contingencies shall be five per centum per annum; and the insurance commissioner shall, on the application of said court, determine the value of such future or contingent or limited estate, income or interest, upon the facts contained in such report, and certify the same to the court, and his certificate shall be conclusive evidence that the method of computation adopted therein is correct. The said appraiser shall be paid by the county treasurer out of any funds that he may have in his hands on account of said tax, on presentation of a sworn itemized account, and on the certificate of the court, at the rate of five dollars per day for every day actually and necessarily employed in said appraisal, together with his actual and necessary traveling expenses.

#### **Acceptance of Bribe by Appraiser.**

S. 1887. Any appraiser appointed by virtue of this chapter, who shall take any fee or reward from any executor, administrator, trustee, legatee, next of kin or heir of any decedent, or from any other person liable to pay said tax, or any portion thereof, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than two hundred and fifty dollars nor more

than five hundred dollars, or by imprisonment in the county jail ninety days or by both such fine and imprisonment, and in addition thereto the court shall dismiss him from such service.

#### **Jurisdiction Over Estate of Non-Resident.**

S. 1888. The probate court in the county in which is situate the real property of a decedent who was not a resident of the state, or if there be no real property, then in the county in which any of the personal property of such non-resident is situate, or in the county of which the decedent was a resident at the time of his death, shall have jurisdiction to hear and determine all questions in relation to the tax arising under the provisions of this chapter, except as hereinafter provided, and the court first acquiring jurisdiction hereunder shall retain the same to the exclusion of every other.

#### **Definitions.**

S. 1889. The words "estate" and "property" as used in this chapter shall be taken to mean the real and personal property or interest therein of the testator, intestate, grantor, bargainor, vendor or donor passing or transferred to individual legatees, devisees, heirs, next of kin, grantees, donees, vendees or successors, and shall include all personal property within or without the state. The word "transfer" as used in this chapter shall be taken to include the passing of property or any interest therein, in possession or enjoyment, present or future, by inheritance, descent, devise, succession, bequest, grant, deed, bargain, sale, gift or appointment in the manner herein described. The word "decedent" as used in this chapter, shall include the testator, intestate, grantor, bargainor, vendor or donor.

#### **Collection of Delinquent Tax.**

S. 1890. If it shall appear to the probate court, or judge thereof, that any tax accruing under this chapter has not been paid according to law, it shall issue a citation, citing the persons known to own any interest in or part of the property liable to the tax, or any person or corporation liable under the law for the payment of said tax, to appear before the court on a day certain, not more than ten weeks after the date of such citation, and show cause why said tax should not be paid. The service of such citation, and the time, manner and proof thereof, and the hearing and determination thereof, and the enforcement of the determination or decree, shall conform as near as may be to the provisions now established by the laws of this state in similar proceedings in the probate courts; and the clerk of the court shall, upon the request of the county attorney or treasurer of the county, furnish, without fee, one or more transcripts of such decree, and the same shall be docketed and filed by the county recorder of any county in the state, without fee, in the same manner and with the same effect as provided by section 4460 of these Codes for filing a transcript of an original docket.

#### **Same. — County Attorney to Institute Proceedings.**

S. 1891. Whenever the treasurer of any county shall have reason to believe that any tax is due and unpaid under this chapter, after the refusal or neglect of the persons interested in the property liable to said tax to pay the same, he shall notify the county attorney of the proper county, in writing, of such failure to pay

such tax, and the county attorney so notified, if he have probable cause to believe a tax is due and unpaid, shall prosecute the proceeding in the probate court, as provided in the preceding section for the enforcement and collection of such tax.

**Record of Estates. — Entries. — Report of Probate Judge.**

S. 1892. The secretary of state shall furnish to each probate judge a book, which shall be a public record, and in which he shall enter the name of every decedent upon whose estate an application has been made to the probate court for the issuance of letters of administration, or letters testamentary, or ancillary letters, the date and place of death of such decedent, the estimated value of his real and personal property, the names, places of residence and relationship to him of his heirs-at-law, the names and places of residence of the legatees and devisees in any will of any such decedent, the amount of each legacy and the estimated value of any real property devised therein, and to whom devised. These entries shall be made from the data contained in the papers filed on any such application, or in any proceeding relating to the estate of the decedent. The probate judge shall also enter in such book the amount of personal property of any such decedent, as shown by the inventory thereof when made and filed in his office, and the returns made by any appraiser appointed by the court under this chapter, and the value of annuities, life estates, terms of years, and other property of such decedent, or given by him in his will or otherwise, as fixed by the probate court, and the tax assessed thereon, and the amounts of any receipts for payment of any tax on the estate of such decedent under this chapter filed with him. The probate judge shall, on the first day of January, April, July and October of each year, make a report in duplicate, upon forms to be furnished by the state auditor, containing all the data and matters required to be entered in such book, and also of the property from which, or the party from whom, he has reason to believe the tax under this chapter is due and unpaid, one of which shall be immediately delivered to the county treasurer and the other transmitted to the state auditor.

**Expenses of Collecting Tax.**

S. 1893. Whenever the probate court of any county shall certify that there was probable cause for issuing a citation and taking the proceedings specified in section 1890, the state treasurer shall pay, or allow, to the treasurer of any county, all expenses incurred for service of citation, and his other lawful disbursements that have not otherwise been paid.

**Settlements and Reports of County Treasurer.**

S. 1894. The treasurer of each county shall collect and pay to the state treasurer all taxes that may be due and payable under this chapter, who shall give him a receipt therefor; of which collection and payment he shall make a report, under oath, to the state auditor, between the first and fifteenth days of May and December of each year, stating for what estate paid, and in such form and containing such particulars as the state auditor may prescribe; and for all such taxes collected by him and not paid to the state treasurer by the first day of June and January of each year, he shall pay interest at the rate of ten per centum per annum.

**Receipts for Taxes Paid.**

S. 1895. Any person, or body politic or corporate, shall, upon payment of the sum of fifty cents, be entitled to a receipt from the county treasurer of any

county, or a copy of the receipt, at his option, that may have been given by said treasurer for the payment of any tax under this chapter, to be sealed with the seal of his office, which receipt shall designate on what real property, if any, of which any decedent may have died seized, said tax has been paid, and by whom paid, and whether or not it is in full of said tax; and said receipt may be recorded in the recorder's office in the county in which said property is situated, in a book to be kept by said recorder for such purpose, which shall be labeled "Inheritance Tax."

#### **Failure of Officers to Perform Duties.**

S. 1896. Every officer who fails or refuses to perform, within a reasonable time, any and every duty required by the provisions of this chapter, or who fails or refuses to make and deliver, within a reasonable time, any statement or record required by this chapter, shall forfeit to the state of Idaho, the sum of one thousand dollars, to be recovered in an action brought by the attorney general in the name of the people of the state, on the relation of the state auditor.

#### **Suits to Enforce Collection, and to Quiet Title Against Tax.**

S. 1897. In all cases where any tax has become or shall hereafter become a lien upon any property under or by virtue of any of the provisions of this chapter, the county attorney of the county in which the estate of the decedent mentioned in this chapter is being administered or has been administered in probate proceedings, may, whenever any property of said estate has been distributed without the payment to the state of all or any part of the taxes payable on account thereof under this chapter, bring and prosecute an action or actions in the name of the state as plaintiff, for the purpose of enforcing such lien or liens, against all or any of the property subject thereto. In any such action the owner of any property or of any interest in property against which the lien of any such tax is sought to be enforced, and any predecessor in interest of any such owner whose title or interest was derived through any such decedent by will or succession or by decree of distribution of the estate of such decedent, and any lienor or incumbrancer subsequent to the lien of such tax may be made a party defendant. The enumeration in this section of the persons who may be made defendants shall not be deemed to be exclusive, but the joinder or non-joinder of parties, except when otherwise herein provided, shall be governed by the rules in equity in similar cases.

(a) Actions may be brought against the state for the purpose of quieting the title to any property, against the lien or claim of lien of any tax or taxes under this chapter, or for the purpose of having it determined that any property is not subject to any lien for taxes under this chapter. In any such action, the plaintiffs may be any administrator or executor of the estate or will of any decedent, whether the said estate shall have been fully administered and the estate settled and closed or not, and any heir, legatee or devisee of any such decedent, or trustee of the estate or of any part of the estate of such decedent, or distributee of the estate or of any part of the estate of any such decedent, and any assignee, grantee, or successor in interest of any such persons, and all or any other persons who might be made parties defendant in any action brought by the state under the provisions of this section, and notwithstanding that all or any of the persons enumerated in this section shall or may have assigned, granted, conveyed or otherwise parted with all or any interest in or title to the property, or any part thereof, involved in any such claim of lien before the commencement of such action. All or any of the

persons in this section enumerated may be joined or united as parties plaintiff. The enumeration in this section of the persons who may be made parties shall not be deemed to be exclusive, but the joinder or non-joinder of parties, except when otherwise herein provided, shall be governed by the rules in equity in similar cases. In all cases any person who might properly be a party plaintiff in any such action who refuses to join as plaintiff may be made a defendant.

(b) All actions under this section shall be commenced in the district court of the county in which is situated any part of any real property against which any lien is sought to be enforced, or to which title is sought to be quieted against any lien, or claim of liens.

(c) Service of summons in the actions brought against the state shall be made on the secretary of state and on the county attorney of the county in which the estate of the decedent mentioned herein is being administered, or has been administered in probate proceedings, and it shall be the duty of said county attorney to defend all such actions.

(d) The procedure and practice in all actions brought under this section, except as otherwise provided in this chapter, shall be governed by the provisions of the code of civil procedure in relation to civil actions, so far as the same shall or may be applicable, including all provisions relating to motions for new trials and appeals.

(e) The remedies provided in this section shall be in addition to and not exclusive of any remedies provided in the sections preceding this section.

## ILLINOIS.

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### In General.

Illinois adopted a tax on all kinds of inheritances in 1895, which included progressive rates applying to distant relatives and strangers, with a maximum of six per cent. The constitutionality of the statute was sustained in the Illinois supreme court. Later the question was raised in the supreme court of the United States, which, in a very far-reaching decision, held that progressive taxation and substantial exemptions do not infringe the equal protection of the law guaranteed by the fourteenth amendment.

The exemptions apply to the individual shares, not to the estate as a whole. The exemption of \$20,000 is the most liberal given to direct heirs in any state.

Illinois taxes stock in Illinois corporations owned by non-residents wherever held. If the corporation transfers the stock without notifying the tax authorities, it is made liable for the tax and is subject to a penalty as well.

Illinois requires the executor or administrator of a non-resident estate to answer, under oath, a printed list of questions before consent is given to the transfer of any Illinois stocks; but this does not necessarily involve setting forth an inventory of the entire estate.

Illinois is taxing stock, owned by non-residents, of foreign corporations that own property in Illinois. We are informed by the tax authorities "that it depends upon the conditions under which the property is held here as to whether a claim would be made." We have yet to learn, however, of any condition under which such stock would not be taxed.

There seems to be more complaint made against the treatment of non-resident estates by Illinois than in the case of any other of the states, not even excepting New York. It refuses to apportion the tax on such stocks as Illinois Central, organized under the laws of Illinois and extending through several other states, while at the same time insisting on an apportionment of such stocks as Rock Island, which are incorporated in other states but have some of their line in Illinois.

On this subject the inheritance tax attorney for Illinois says: "The rates of taxation in New York, New Jersey and all other eastern states, as well as all states in the Union which have inheritance tax laws, embody rates of taxation greatly in excess of those provided in the inheritance tax laws of this state. The exemptions provided by our law are so large and liberal that 90 per cent at least of all of the securities transferred (owned at death by non-resident decedent) are not taxable at all."

### **Constitutional Limitations.**

#### **Illinois Constitution, 1870, a. 9, s. 1.**

The general assembly shall provide such revenue as may be needful by levying a tax, by valuation, so that every person and corporation shall pay a tax in proportion to the value of his, her or its property — such value to be ascertained by some person or persons to be elected or appointed in such manner as the general assembly shall direct, and not otherwise; but the general assembly shall have power to tax pedlers, auctioneers, brokers, hawkers, merchants, commission merchants, showmen, jugglers, inn-keepers, grocery-keepers, liquor-dealers, toll-bridges, ferries, insurance, telegraph and express interests or business, venders of patents and persons or corporations owning or using franchises and privileges, in such manner as it shall from time to time direct by general law, uniform as to the class upon which it operates.

### **List of Statutes.**

1887. Statutes of Illinois, p. 183.  
 1891. " " " p. 137.  
 1895. " " " p. 301.  
 1901. " " " p. 268.  
 1901. " " " p. 269.  
 1909. " " " p. 311.  
 Meyer's Revised Statutes of Illinois, p. 1304, s. 307.  
 Hurd's Revised Statutes of Illinois, 1898, p. 1367, s. 366-388, inc.  
 " " " " " 1901, p. 1511, s. 366.  
 " " " " " 1903, p. 1576, s. 366.  
 " " " " " 1908, p. 1819, s. 366.  
 Jones & Addington's Supplement, pp. 1104-1105, ss. 70-74, inc.  
 1909. Revised Statutes of Illinois, c. 120, ss. 366-388.

### **Early Probate Duties.**

Ill. St. 1887, p. 183, approved June 6, 1887, relates to fees and salaries of clerks of probate courts in counties in the third class; and also provides a fee on a grant of probate, administration, guardianship or conservatorship, when the estate does not exceed five thousand dollars, of five dollars; from five thousand dollars to twenty



thousand dollars, ten dollars; twenty thousand dollars to fifty thousand dollars, twenty dollars; fifty thousand dollars to one hundred thousand dollars, fifty dollars; one hundred thousand dollars to three hundred thousand dollars, one hundred dollars; three hundred thousand dollars to a million dollars, two hundred and fifty dollars; in all cases of a million dollars and upwards, a thousand dollars. The law also provides an exemption where the deceased leaves a surviving widow or children resident in this state and where the entire estate of the deceased person did not exceed two thousand dollars.

Ill. St. 1891, p. 137, approved June 19, 1891, provides for the fees of clerks in probate in counties of the third class, in cases of probate, administration, guardianship or survivorship, where the estate does not exceed five thousand dollars, five dollars; and one dollar for every additional thousand dollars. It also provides an exemption where the deceased leaves a surviving widow or children resident in this state and his entire estate does not exceed two thousand dollars. It also authorizes the judge in all estates not exceeding five hundred dollars in value to suspend and modify or remit the costs.

### THE ACT OF 1895.

#### **Follows New York Act in Language and Construction.**

The Illinois statute is one of the most objectionable acts upon the subject to be found, and it was evidently modeled after the New York statute in many respects. *In re Inheritance Tax*, 23 Colo. 392, 493, 48 P. 535. It is a substantial copy of the New York statute of 1885 as amended in 1887. *People v. Griffith*, 245 Ill. 532, 92 N. E. 313.

The general rule applies to inheritance laws that where a statute is adopted from another state it will be presumed that the legislature intended it to receive the construction given by the courts of that state if it had been previously construed unless in conflict with the spirit and policy of the laws of the second state. *People v. Griffith*, 245 Ill. 532, 92 N. E. 313.

The New York decisions are not of value in construing the Illinois statute as to the taxation of remainder interests. One of the main differences between the Illinois act and the New York act is that the former taxes all successions excepting life estates and terms for years mentioned in section 2, while the latter taxes only succes-

sions to collaterals or strangers in blood. *In re Kingman*, 220 Ill. 563, 77 N. E. 135.

### **Nature of Inheritance Tax.**

The statute of 1895 was in effect an assertion of sovereignty in the estate of deceased persons.

The laws of descent and the right to devise and take under a will in Illinois owe their existence to the statute law of the state. The laws of descent and devise being the creation of statute, the power which creates may regulate and may impose conditions or burdens on a right of succession to property of which there has ceased to be an owner because of death. *Kochersperger v. Drake*, 167 Ill. 122, 47 N. E. 321, 41 L. R. A. 446, affirmed in *Magoun v. Illinois Trust and Savings Bank*, 170 U. S. 283, 18 S. Ct. 594, 42 L. Ed. 1037.

An inheritance tax is not upon the property itself but upon the right to succeed to the property. The succession to the ownership of the property being by permission of the state, the state can impose conditions regarding such privilege or permission. The courts therefore have upheld the imposition of the inheritance tax whenever the state had jurisdiction of the beneficiary or the subject matter, regardless of the actual location of the personal property or the domicile of the decedent. *People v. Griffith*, 245 Ill. 532, 92 N. E. 313.

"Inheritance or succession taxes are not laid on the property inherited or taken by devise or bequest, but on the right to inherit or to take such property. The right to take property in pursuance of the statute of descent or of the statute pertaining to wills is property, but only for the reason that the law-making body of the state has seen fit to create the right to so take by inheritance or by devise or bequest. No person or corporation can inherit property or can take by devise or bequest except when authorized so to do by an act of the legislature. Such right may at any time be abrogated prospectively, at the will of the legislature, or, in the exercise of the same power in quality though lesser in degree the law-making department of the state may modify, regulate or impose conditions on the right to succeed by inheritance or devise to property which was owned by a person who has died. Thus, the power of the legislature to lay a tax on the right of any person or corporation to take property by inheritance or by devise or bequest is found to be clear and undoubted. In laying such a tax the legislature may consider the relation which the person or corporation given the

right of succession sustains to the deceased, to the property or to the state, and may regulate the amount of the tax to be required in view of such relation, and in exercising this power may lay a tax on the right of one class of persons or corporations to take and may deem it wise to impose no tax upon the right of other classes of persons or corporations to take. Embraced within the power possessed by the legislature to abrogate the right to take is the power to qualify that right and to impose conditions and burdens upon it. If a burden in the nature of taxation is laid upon the right, the constitutional principle that taxes must be uniform as to the classes upon which they operate must be observed. Subject to this restriction the legislature may lay taxes upon the right of one class of persons and corporations to succeed to property of deceased persons and exempt the right of other classes of persons or corporations from such taxation." *Per* Boggs, J., in *In re Speed*, 216 Ill. 23, 74 N. E. 809, 108 Am. St. Rep. 189, affirmed 203 U. S. 553, 27 S. Ct. 171, 51 L. Ed. 314.

Ill. St. 1895, p. 301. Approved June 15, 1895.

**Transfers Taxable. — Rate.**

S. 1. All property, real, personal and mixed which shall pass by will or by the intestate laws of this state from any person who may die seized or possessed of the same while a resident of this state or, if decedent was not a resident of this state at the time of his death, which property or any part thereof shall be within this state or any interest therein or income therefrom, which shall be transferred by deed, grant, sale or gift made in contemplation of the death of the grantor or bargainor or intended to take effect, in possession or enjoyment after such death, to any person or persons or to any body politic or corporate in trust or otherwise, or by reason whereof any person or body politic or corporate shall become beneficially entitled in possession or expectation to any property or income thereof, shall be, and is, subject to a tax at the rate hereinafter specified to be paid to the treasurer of the proper county for the use of the state, and all heirs, legatees and devisees, administrators, executors and trustees shall be liable for any and all such taxes until the same shall have been paid as hereinafter directed. When the beneficial interests to any property or income therefrom shall pass to or for the use of any father, mother, husband, wife, child, brother, sister, wife or widow of the son or the husband of the daughter, or any child or children adopted as such in conformity with the laws of the state of Illinois, or to any person to whom the deceased, for not less than ten years prior to death, stood in the acknowledged relation of a parent, or to any lineal descendant born in lawful wedlock, in every such case the rate of tax shall be one dollar on every hundred dollars of the clear market value of such property received by each person and at and after the same rate for every less amount, provided that any estate which may be valued at a less sum than twenty thousand dollars shall not be subject to any such duty or taxes, and the tax is to be levied in above cases only upon the excess of twenty thousand dollars received by each person. When the

beneficial interests to any property or income therefrom shall pass to or for the use of any uncle, aunt, niece, nephew or any lineal descendant of the same, in every such case the rate of such tax shall be two dollars on every one hundred dollars of the clear market value of such property received by each person on the excess of two thousand dollars so received by each person. In all other cases the rate shall be as follows: On each and every hundred dollars of the clear market value of all property and at the same rate for any less amount; on all estates of ten thousand dollars and less, three dollars, on all estates of over ten thousand dollars and not exceeding twenty thousand dollars, four dollars; on all estates over twenty thousand dollars and not exceeding fifty thousand dollars, five dollars, and on all estates over fifty thousand dollars, six dollars: Provided, that an estate in the above case which may be valued at a less sum than five hundred dollars shall not be subject to any duty or tax.

### **Progressive Feature and Classification by Relationship Upheld.**

Illinois Constitution, 1870, article 9, section 1, provides that taxes shall be in proportion to the value of property. The act of 1895 is not void under this provision on the ground that it provides certain classes of property depending on relationship and the size of the property with a different rate of taxation for each class. The class on which a tax is thus levied is general and uniform and pertains to all species of property included within that class. A tax which affects the property within a specific class is uniform as to that class and there is no provision of the constitution which precludes a tax on that particular class. No want of uniformity with one living who owns property can be urged as a reason why the statute makes an inconsistent rule. No person inherits nor can take by devise except by statute, and the state having power to regulate this question may create classes and provide for uniformity with reference to classes which were before unknown. *Kochersperger v. Drake*, 167 Ill. 122, 47 N. E. 321, 41 L. R. A. 446, affirmed in *Magoun v. Illinois Trust & Savings Bank*, 170 U. S. 283, 18 S. Ct. 594, 42 L. Ed. 1037.

The Illinois St. 1895, page 301, is constitutional and is not void as providing an arbitrary or unreasonable classification. There are three main classes in the Illinois statute, the first and second being composed respectively of lineal and collateral relationship and the third being composed of strangers to the blood and distant relatives. The latter is again divided into four sub-classes depending upon the amount of the estate received. The first two classes, therefore, depend upon substantial differences which bear a just and proper relation to the attempted classification.

The court says that it is true that the amount of the exemption is greater in the Illinois law than in any other, but the right to exempt cannot depend on that, as that is a legislative and not a judicial function.

As to the progressive feature of the act, there are four classes created and there is equality between the members of each class. It was pointed out that the tax is not in proportion to the amount, but varies with the amount arbitrarily fixed, and hence that one who is given a legacy of \$10,001 by the deduction of the tax receives \$99.04 less than one who is given a legacy of \$10,000. But the court holds that this is not contrary to the rule of equality of the fourteenth amendment and "that rule does not require, as we have seen, exact equality of taxation. It only requires that the law imposing it shall operate on all alike, under the same circumstances. The tax is not, on money, it is on the right to inherit; and hence a condition of inheritance, and it may be graded according to the value of that inheritance. The condition is not arbitrary because it is determined by that value; it is not unequal in operation because it does not levy the same percentage on every dollar; does not fail to treat all "alike under like circumstances and conditions, both in the privilege incurred and the liabilities imposed." *Per McKenna, J., in Magoun v. Illinois Trust & Savings Bank*, 170 U. S. 283, 298, 300, 18, S. Ct. 594, 42 L. Ed. 1037, affirming *Kochersperger v. Drake*, 167 Ill. 122, 47 N. E. 321; 41 L. R. A. 446.

The Illinois statute was also attacked before the supreme court on the ground that the tax was a property tax and that the right of inheritance and of testamentary disposition were natural rights beyond the power of the legislature to take away. The supreme court had within two years expressed the contrary opinion on both these points in *United States v. Perkins*, 163 U. S. 625, and the court cites these decisions, but a determination of these points was not necessary to the decision. The real basis of the decisions was simply the principle that progressive taxation and generous exemptions are not in violation of the rule of equality of the fourteenth amendment. *Magoun v. Illinois Trust and Savings Bank*, 170 U. S. 283, 18 S. Ct. 594, 42 L. Ed. 1037, affirming *Kochersperger v. Drake*, 167 Ill., 122, 47 N. E. 321, 41 L. R. A. 446.

#### **"All Property." — Expenses Deducted.**

Lawful expenditures and expenses incurred by the executors in defending a will against the heirs at law should be deducted in

determining the amount on which to compute the inheritance tax under the act of 1895. *Connell v. Crosby*, 210 Ill. 380, 71 N. E. 350, distinguishing *In re Lines* 155, Pa. St. 378, 26 A. 728, where the expenses of legatees assisting the trustees were not deducted, and *In re Westurn*, 152 N. Y. 93, 46 N. E. 315, where the expenses of heirs who had successfully contested the will were not allowed.

**Marshaling Assets to pay Debts. — Foreign Land not Taxed.**

Where the estate of the testator consisted of real and personal property in Illinois and real estate outside the state and a large indebtedness, the lower court held erroneously that in order to ascertain the amount on which to compute the tax the value of the personal property should be deducted from the total indebtedness of the estate and the remaining indebtedness should be apportioned upon all the real estate both foreign and domestic and that the tax should be laid upon the amount so apportioned on the value of the lands in Illinois. This resulted by indirection in laying a tax on the foreign lands and was erroneous. *Connell v. Crosby*, 210 Ill. 380, 392, 71 N. E. 350.

**"Pass . . . by the Intestate Laws of this State." — Land in another State not Taxed, although Directed to be Sold.**

A tax is laid on all property which shall pass by will or by the intestate laws of the state. This does not include land owned by the testator in other states, as such lands do not pass under the intestate laws of Illinois, but under the statutes of the state where the land is situated. The statute never intended to distinguish between the case of land passing under the intestate laws and land passing by will. (This result was reached in New York in *In re Swift*, 137 N. Y. 77, 32 N. E. 1096.)

Land in another state cannot be taxed although the will directs it to be converted into money, as the doctrine of equitable conversion cannot be applied in proceedings for the collection of inheritance taxes. *Connell v. Crosby*, 210 Ill. 380, 71 N. E. 350.

**"Pass . . . by the Intestate Laws of this State." — Dower.**

Dower less the exemption provided by statute is subject to the inheritance tax. *People v. Field*, 248 Ill. 147, 93 N. E. 721; *Billings v. People*, 189 Ill. 472, 59 N. E. 798, 59 L. R. A. 507.

Under the statute of 1895, "intestate laws" include the widow's dower. It was contended that dower is of great antiquity and was

not created by statute but by the common law; but the court holds that the institution of dower is subject to full legislative control and may be changed or modified at any time. The court holds that the "intestate laws" referred to are those laws of the state which cover the devolution of estates and of persons dying intestate and include all applicable rules of the common law in force in this state and they regulate and control the interest which the widow took in her husband's property at his death. *Billings v. People*, 189 Ill. 472, 477, 59 L. R. A. 807.

Where the testator signed an ante-nuptial agreement by which the wife took a certain sum in lieu of her dower rights on his death, the court holds that this sum taken under the agreement is not exempt from the inheritance tax. Being in lieu of dower it is subject to tax as dower is. The amount received by the widow should not be deducted in estimating the market value of the estate. *People v. Field*, 248 Ill. 147, 93 N. E. 721.

#### **"A Resident of this State."**

"The terms 'residence,' 'abode,' 'domicile' and kindred terms differ somewhat in meaning, but when used in statutes similar to the Illinois inheritance statute have frequently been held to be synonymous."

A man is a resident of Illinois who has lived in Illinois for some years but who has declared his intention of moving out of the state as soon as his business is settled, when he is taken ill and goes to the house of his daughter in the other state where he dies. The facts show that he went to his daughter's house for a temporary purpose only. *In re Moir*, 207 Ill. 180, 69 N. E. 905, 99 Am. St. Rep. 205.

#### **"Which Property shall be Within this State." — Situs of Personal Property.**

Rulings as to the situs of personal property under the general tax law are not controlling on a construction of the inheritance law, as the inheritance laws are not taxes in the strict sense of the term.

The liability of property to inheritance tax does not depend upon its location, but upon whether the beneficiary came into its possession through the exercise of a privilege conferred by the state.

Where personal property of a non-resident is left in Illinois solely for safe keeping and not for investment, stocks and bonds of domestic corporations, cash on deposit and the tangible personal property in Illinois are subject to tax, and stocks and bonds of foreign

corporations are not subject to tax. The counsel for the state conceded that if this was so bonds of a railroad company organized under the laws of Illinois and Iowa and located partly in both states are not property within the meaning of the statute subject to the tax. *People v. Griffith*, 245 Ill. 532, 542, 92 N. E. 313.

"The tendency of modern legislation in this country is to extend the state's taxing power to all property within its jurisdiction (27 Am. & Eng. Ency. of Law, 2d ed., 650), and this is especially true as to inheritance taxes on the right of succession to all property, whether real or personal, tangible or intangible, which passes testate or intestate from decedents to other persons."

"The ancient maxim that movables follow the domicile of the person was an outgrowth of conditions which have long since ceased to exist, and the rule has been greatly limited in certain matters, such as taxation and the subjecting of personal property of non-residents to the claims of local creditors. It is usually, however, the law that personal property is sold, transmitted or obtained under the will or intestate law according to the law of the domicile and not that of the situs of the property." *People v. Griffith*, 245 Ill. 532, 92 N. E. 313.

#### **"Deed . . . in Contemplation of the Death. . . ."**

The question whether a gift was made in contemplation of death is a question of fact. *People v. Kelley*, 218 Ill. 509, 75 N. E. 1038.

"A gift is made in contemplation of an event when it is made in the expectation of that event and having it in view, and a gift when the donor is looking forward to his death as impending and in view of that event is within the language of the statute." Per Cartwright, J., in *Rosenthal v. People*, 211 Ill. 306, 71 N. E. 1121.

Where a parent makes a deed in trust for the sole benefit of the *cestuis* but reserves unto himself a certain income for life, the court may divide the property and levy an inheritance tax on that portion of it necessary to raise the income stipulated. *People v. Kelley*, 218 Ill. 509, 75 N. E. 1038, following *People v. Moir*, 207 Ill. 180, 69 N. E. 905, 99 Am. St. Rep. 205.

Under this statute a gift may be subject to tax if made in contemplation of the death of the donor although the transfers were absolute and were accepted by the donees who entered into possession and ownership of the property transferred, and after the transfers the donor had no interest in the property. It was claimed that a gift *causa mortis* is a transfer of property made without



consideration in contemplation of death, and that the stipulation that the gift was absolute prevents it from being a gift *causa mortis*. But the court finds that as the gifts were made in contemplation of death they were gifts *inter vivos* made in contemplation of death and within the designation of gifts *causa mortis*. *Merrifield v. People*, 212 Ill. 400, 72 N. E. 446.

It was argued in *In re Benton*, 234 Ill. 366, 84 N. E. 1026, that the reasoning by which the inheritance tax law is declared constitutional cannot be applied to gifts *inter vivos* and the court remarks that the contention that a gift made "in contemplation of death" should be construed as a gift *causa mortis* is more plausible than sound, and dismisses the contention without further discussion.

The tax is due in a case where the grantor suffered from spinal trouble with a malignant growth and became rapidly worse, and where three days after the making of the grant he made his will and died at the end of a month, although no evidence appeared of his intent to defraud the state of his inheritance tax. No such intention needs to appear. The statute covers all gifts made in contemplation of death and that language does not naturally nor necessarily involve a fraudulent intent. *Rosenthal v. People*, 211 Ill. 306, 71 N. E. 1121. Where an old man suffering from an incurable disease makes gifts of a large portion of his property to various relatives because he is afraid that his wife will claim her statutory dower in his property which on her death would go to his stepson, and where the object of the gifts to relatives is to avoid this result by reducing the estate so that the wife by self interest will desire to take under his will and not her statutory interest, this gift is made "in contemplation of death" within the language of the Illinois statute. *In re Benton*, 234 Ill. 366, 84 N. E. 1026. Where the deed and partnership agreement between a father and his sons were executed simultaneously and where the real estate was not a partnership asset but the profits from the real estate were carried into the partnership account, and where the father received one-half the rents on the land until his death, one-half of the lands are subject to inheritance tax, as their possession and enjoyment was postponed during the life of the grantor. A conveyance must part with the possession, the title and the enjoyment in the grantor's lifetime. *People v. Moir*, 207 Ill. 180, 69 N. E. 905, 99 Am. St. Rep. 205.

A conveyance did not take effect in contemplation of death where the grantor was not in immediate danger of death at the time the deed was delivered, and the conveyance was made as a provision for

the grantor's two sons and the deed was withheld from record by mutual arrangement between the parties, but was fully delivered to the trustee and possession of the premises turned over to the trustees at the time of the delivery of the trust deed. It is not the object of the Illinois statute to prevent a parent from giving the whole or any portion of his property to his children in his lifetime if he so desire. *People v. Kelley*, 218 Ill. 509, 75 N. E. 1038.

The testator's wife died in 1897, leaving a daughter thirty-five years old, who was a deaf mute. After the death of the mother a companion for the daughter who had lived in the family married, and thereafter the testator entered into a contract with another companion whereby, in consideration of her continuing to act as companion of and caring for the daughter as long as the daughter lived, the testator undertook to convey and transfer to her all the property he possessed.

The comrade faithfully performed her part of the contract until 1904 when the daughter died, and the testator conveyed from time to time various parts of his property to the companion. It appeared that the companion had exclusive dominion over the property. The testator was seventy-four years old when he made the agreement, but he was in good health though not strong. The testator might well expect the daughter to outlive him; but he did not transfer his property to his daughter or in trust for her. Instead he sold it in consideration of a contract for her care, the performance of which began and was finished in her lifetime. The motive for transferring the property was not his impending death but his desire to provide for his daughter's future, whether he lived or died, and hence no tax can be collected. The contemplation of death must be the impelling motive, without which the conveyance would not be made, in order to subject a transfer of property to the inheritance tax. *People v. Burkhalter*, 247 Ill. 600, 93 N. E. 379.

**"Entitled . . . in Expectation."**

Expectation does not include a future defeasible interest but means a vested remainder not subject to any contingency. The statute contemplates, to authorize the imposition of the tax on practical and actual ownership, possession of a title to something that can be conveyed. "The right to tax is based upon the right to succeed. The amount of the tax is fixed by the amount of the property which as a result of the right to succeed passes to the beneficiary. The tax is levied on the succession and not on the property as such. . . . When the basis of the tax, the rate and the

exemption, if any, cannot be fixed, the tax itself cannot be fixed. No other course is left open in the practical administration of the statute than to postpone the assessing and collecting of the tax upon such remote contingent interests as are incapable of valuation and as to which the rate and the exemptions cannot be determined." *People v. McCormick*, 208 Ill. 437, 70 N. E. 350, 64 L. R. A. 775.

Estates in expectation are subject to tax under this section, and remainders whether vested or contingent are estates in expectation within the meaning of the statute and they are taxable at once on the death of the testator. *Ayers v. Chicago Title & Trust Co.*, 187 Ill. 42, 58 N. E. 318. The language in *Ayers v. Chicago Title & Trust Co.*, 187 Ill. 42, 58 N. E. 318, to the effect that whether or not the remainders were vested or contingent is not material, is only dictum, and the court declines to follow it in *People v. McCormick*, 208 Ill. 437, 70 N. E. 350, 64 L. R. A. 775.

#### **"Beneficial Interests."**

The tax provided on the "beneficial interests" to property passing to or for any child of the testator is on the value given to the child after deducting the cash value of the widow's dower. The court distinguishes *In re Kingman*, 220 Ill. 563, 77 N. E. 135, as in that case the estate was for years and not for life.

"Obviously, under sections 1 and 2 of the inheritance tax law as construed by this court in the cases heretofore cited, the legislature intended that a person should be taxed only on the beneficial interest that he receives. The only beneficial interest in the real estate that passed to the daughter in this case from her father's estate was the value of this real estate less the value of the dower interest of the mother. The county court decided rightly in deducting the cash value of said dower when fixing the beneficial interest received by and taxed against the daughter." *Per Carter, J.*, in *People v. Nelms*, 241 Ill. 571, 89 N. E. 683.

#### **"Clear Market Value."**

"Clear market value" does not mean the selling price of property at a forced or involuntary sale, so the appraisal may be made at the price at which small blocks of stock held by the estate were sold at or about the date of the death of the decedent, and the appraiser should not consider the fact that the estate held large blocks of stock which if all forced on the market at the death of the decedent would have depressed the market price of the stock. *Walker v. People*, 192 Ill. 106, 61 N. E. 489.

**Exemptions.**

In *Murphy v. People*, 213 Ill. 154, 72 N. E. 779, the court imposed a tax of three per cent on a legacy to one who claimed she was a niece of the testator and therefore entitled to two thousand dollars of the legacy free from tax. The court discusses the questions only arising out of the legality of the marriage claimed by the party taxed.

**Exemption to Life Tenants with Remainder to Collaterals is Valid.**

Section 1 as construed places a tax upon life tenants with remainder to lineal descendants, and no tax on life tenants with remainder to collateral heirs. This is not an arbitrary or warranted discrimination between life tenants. A life estate with the fee descending in lineal life might well be more desirable than a life estate with remainder to collateral heirs or strangers to the blood. The exemption may be regarded as a concession to beneficiaries of the first class while the last of their line to hold and enjoy property. *Billings v. People*, 189 Ill. 472, 59 L. R. A. 807.

**Particular Estates and Remainders.**

S. 2. When any person shall bequeath or devise any property or interest therein or income therefrom to mother, father, husband, wife, brother and sister, the widow of the son, or a lineal descendant during the life or for a term of years or remainder to the collateral heir of the decedent, or to stranger in blood or to body politic or corporate at their decease, or on the expiration of such term, the said life estate or estates for a term of years shall not be subject to any tax and the property so passing shall be appraised immediately after the death at what was the fair market value thereof at the time of the death of the decedent in the manner hereinafter provided, and after deducting therefrom the value of said life estate, or term of years, the tax transcribed by this act on the remainder shall be immediately due and payable to the treasurer of the proper county, and, together with the interests thereon, shall be and remain a lien on said property until the same is paid: Provided, that the person or persons or body politic or corporate beneficially interested in the property chargeable with said tax elect not to pay the same until they shall come into the actual possession of such property, or, in that case said person or persons or body politic or corporate shall give a bond to the people of the state of Illinois in the penalty three times the amount of the tax arising upon such estate with such sureties as the county judge may approve, conditioned for the payment of the said tax, and interest thereon, at such time or period as they or their representatives may come into the actual possession or enjoyment of said property, which bond shall be filed in the office of the county clerk of the proper county: Provided, further, that such person shall make a full, verified return of said property to said county judge, and file the same in his office within one year from the death of the decedent, and within that period enter into such securities and renew the same for five years

**Constitutionality.**

This section in effect provided that a life estate should be taxable when the remainder was to lineal descendants and not taxable where the remainder was to collateral descendants or strangers. It was claimed that this was void, as unreasonable classification; that life tenants constitute but a single class, as the incidents of such an estate are the same irrespective of the ultimate vesting of the remainder. The court holds, however, that this was entirely within the discretion of the state legislature; that the power of the state to impose conditions upon the transfer or devolution of estates is complete where no discrimination is exercised in the creation of a class. "Crossing the lines of classes created by the statute discriminations may be exhibited, but within the classes there is equality." The court relies on the case of *Magoun v. Illinois Trust & Savings Bank*, 170 U. S. 283, 18 Sup. Ct. 594, 42 L. Ed. 1037; *Billings v. People*, 188 U. S. 97, 104, 23 S. Ct. 272, 47 L. Ed. 400; affirming 189 Ill. 472.

**"To . . . Wife . . . During the Life."**

The language exempting the life estate in any property devised or bequeathed to the wife of the testator does not apply when the wife renounces the will and elects to take her statutory rights. *Connell v. Crosby*, 210 Ill. 380, 71 N. E. 350.

"Or remainder to the collateral heir" should be read "and remainder," etc. *Billings v. People*, 189 Ill. 472, 59 L. R. A. 807. The word "or" before the word "remainder" in this section can have no other meaning than "and." It follows that the life estate or estate for a term of years referred to in section 2 is only exempt from the inheritance tax when the remainder following upon the expiration of such an estate is to the collateral heir or stranger in blood, or to the body politic or corporate. *Ayers v. Chicago Title & Trust Co.*, 187 Ill. 42, 56, 58 N. E. 318.

Where a will creates a trust estate for a period of ten years and provides that the full estate at the expiration of that time shall be turned over to the wife and children they get a vested remainder, and as there are none of them collateral heirs or strangers the exception provided in Ill. St. Hurd's Sts. 1903, p. 1576, s. 2, does not apply; and therefore the estate was immediately taxable under section 1. *In re Kingman*, 220 Ill. 563, 565, 77 N. E. 135.

**"At Their Decease."**

The words "at their decease" refer back to the first clause of section 2, and the word "their" refers to the persons or classes mentioned in that clause. In other words the remainder referred to is a remainder at the decease of "mother, father, husband, wife, brother and sister, the widow of the son or a lineal descendant." *Ayers v. Chicago Title & Trust Co.*, 187 Ill. 42, 55, 58 N. E. 318.

**"Property so Passing shall be Appraised Immediately After the Death."**

The words "after the death" refer to the death of the testator and not to the death of the life tenant. *Ayers v. Chicago Title & Trust Co.*, 187 Ill. 42, 58 N. E. 318.

**"Deducting Therefrom the Value of said Life Estate."**

The only provision for deduction of the primary estate in assessing the value of the remainder interest is in section 2 and that where the remainder goes to the collateral heirs, to a stranger to the blood, or to a body politic or corporate, in which case the value of the preceding estate is first to be deducted and the tax extended on the remainder only. *In re Kingman*, 220 Ill. 563, 77 N. E. 135.

**"Provided that the . . . Persons . . . Interested . . . Elect Not to Pay the Same until they come into Actual Possession."**

Under this section the right to succession under a will to an estate in remainder is liable to be taxed and the valuation to be made as of the date of the death of the testator, and the value to be taken on the estate of the decedent less the value of the life estate; and where the remaindermen do not or cannot (as where they are uncertain) make an election not to pay the tax until they come into actual enjoyment as provided by section 2 the tax must be paid at once. And the court further holds that where there is no provision for the remainder going to collateral relatives, a stranger to the blood or to a corporation, there is no one to make an election and the tax on the remainder becomes due under section 2 and section 3 of the statute. *Ayers v. Chicago Title & Trust Co.*, 187 Ill. 42, 58 N. E. 318.

**"Shall Give a Bond."**

The right of remaindermen to file a bond for the payment of the tax is not decided, as it did not appear that any request to file

such a bond had been made in the lower court. *In re Kingman*, 220 Ill. 563, 77 N. E. 135.

### **When Tax is Due. — Interest. — Discount.**

S. 3. All taxes imposed by this act, unless otherwise herein provided for, shall be due and payable at the death of the decedent, and interest at the rate of six per cent per annum shall be charged and collected thereon for such time as said taxes is not paid: Provided, that if said tax is paid within six months from the accruing thereof, interest shall not be charged or collected thereon, but a discount of five per cent shall be allowed and deducted from said tax, and in all cases where the executors, administrators or trustees do not pay such tax within one year from the death of the decedent, they shall be required to give a bond in the form and to the effect prescribed in section two of this act for the payment of said tax, together with interest.

### **"All Taxes . . . Shall be Due and Payable at the Death of the Decedent."**

It is the intention of the Illinois inheritance law as appears from sections 1, 2 and 3 that all the estates subject to taxation under the act shall be appraised in value and the taxes thereon fixed promptly upon the death of the testator or within a reasonable time thereafter. *In re Kingman*, 220 Ill. 563, 77 N. E. 135.

The act provides that the tax shall be due and payable on the death of testator, but it also provides that the tax shall be laid on the market value of the property received by the beneficiary. Where a future estate depends on such possibilities as the marriage or having children of life tenants it is a mere possible interest which could not have a market value; and the courts in order to enforce immediate collection of the tax cannot change the tax from one on succession to one on property. No other course is left open in the practical administration of the statute than to postpone the assessing and collecting of tax upon such remote contingent interests as are incapable of valuation and as to which the rate and the exceptions cannot be determined. *Billings v. People*, 189 Ill. 472, 59 L. R. A. 807.

Where a will provides for many contingencies that may arise in twenty years next succeeding the death of the testator, the imposition of the inheritance tax is properly deferred until it can certainly be known who is the beneficiary entitled to the fund. Then the legatee will get his property and the state will get its tax under Ill. Hurd's Rev. Sts. 1901, c. 120, s. 366. *People v. McCormick*, 208 Ill. 437, 448, 70 N. E. 350, 64 L. R. A. 775.

The right to impose the tax presently depends not upon the character of the estate devised with reference to its being a contingent or vested remainder, but upon the question whether the person who will ultimately be entitled to a beneficial interest in the remainder can be now identified, or whether the proportion to which he will succeed can be now determined. *People v. McCormick*, 208 Ill. 437, 70 N. E. 350, 64 L. R. A. 775.

**"Unless Otherwise Provided For."**

The only provisions referring to "unless otherwise provided for" are the provisions of section 2 with reference to remainders to collateral heirs, strangers to the blood and the body politic or corporate. *Ayers v. Chicago Title & Trust Co.*, 187 Ill. 42, 58 N. E. 318.

**Deduction of Tax from Shares of Beneficiaries.**

S. 4. Any administrator, executor or trustee having any charge or trust in legacies or property for distribution subject to the said tax shall deduct the tax therefrom, or if the legacy or property be not money he shall collect a tax thereon upon the appraised value thereof from the legatee or person entitled to such property, and he shall not deliver or be compelled to deliver any specific legacy or property subject to tax to any person until he shall have collected the tax thereon, and whenever any such legacy shall be charged upon or payable out of real estate, the heir or devisee, before paying the same, shall deduct said tax therefrom and pay the same to the executor, administrator or trustee, and the same shall remain a charge on such real estate until paid, and the payment thereof shall be enforced by the executor, administrator or trustee in the same manner that the said payment of said legacies might be enforced, if, however, such legacy be given in money to any person for a limited period, he shall retain the tax upon the whole amount, but if it be not in money, he shall make application to the court having jurisdiction of his accounts to make an apportionment, if the case requires it, of the sum to be paid into his hands by such legatees, and for such further order relative thereof as the case may require.

The statute of 1895 gives the county court jurisdiction to determine the inheritance tax, but where the judge of the county court is one of the parties in interest he may certify the question to the circuit court. Section 4 of the statute of 1895, providing that the executor shall apply to the court having jurisdiction over his accounts to make an apportionment of the sum to be paid by the legatees and for such further order as the case may require, does not oust the county court of jurisdiction given it under sections 13, 14 and 15. Section 4 relates not to the collection of the tax but only to questions which may arise as to the apportionment of taxes



in the course of the settlement of the affairs of the estate, with no intent to deprive the county court of jurisdiction of the proceedings on the part of the state to collect the taxes. *Connell v. Crosby*, 210 Ill. 380, 71 N. E. 350.

### **Appraisal.**

S. 11. In order to fix the value of property of persons whose estate shall be subject to the payment of said tax, the county judge, on the application of any interested party, or upon his own motion, shall appoint some competent person as appraiser as often as, or whenever, occasion may require, whose duty it shall be forthwith to give such notice by mail to all persons known to have or claim an interest in such property, and to such persons as the county judge may by order direct, of the time and place he will appraise such property, and at such time and place to appraise the same at a fair market value, and for that purpose the appraiser is authorized by leave of the county judge to use subpoenas for and to compel the attendance of witnesses before him, and to take the evidence of such witnesses under oath concerning such property and the value thereof, and he shall make a report thereof and of such value in writing to said county judge, with the depositions of the witnesses examined and such other facts in relation thereto, and to said matter as said county judge may by order require to be filed in the office of the clerk of said county court, and from this report the said county judge shall forthwith use and fix the then cash value of all estates, annuities and life estates or terms of years growing out of said estate, and the tax to which the same is liable, and shall immediately give notice by mail to all parties known to be interested therein. Any person or persons dissatisfied with the appraisal or assessment may appeal therefrom to the county court of the proper county within sixty days after the making and filing of such appraisal or assessment, on paying the given security proof to the county judge to pay all costs, together with whatever taxes that shall be fixed by said court. The said appraiser shall be paid by the county treasurer out of any funds he may have in his hands on account of said tax, on the certificate of the county judge, at the rate of three dollars per day for every day actually and necessarily employed in said appraisal, together with his actual and necessary traveling expenses.

### **"Fair Market Value."**

Appraisers are not limited in the valuation of property to the market quotation of the same, but may use the quotations of the same on public exchanges, private sales of such property, testimony as to the actual value of the same and their own knowledge of the subject matter.

"The quotation of the stock exchange may be temporarily uncertain and untrustworthy, if the sales thereon are suddenly affected for speculative purposes, or by the forcing upon the market and to sale of large blocks of stock in an extraordinary manner with no explanation of such action, and where the purpose of it is left to the conjecture of those dealing in the stocks; but such quotations

may be a fair and safe guide when they are taken for a reasonable period of sales made in the usual and ordinary course of business." *Per Magruder, J., in Walker v. People*, 192 Ill. 106, 112, 61 N. E. 489.

### **"From This Report."**

The appraiser should show the value of the estate received by each residuary legatee under the will and in doing so should deduct the gifts and legacies preceding the residuary clause of the will. An appraisement should not be made on the basis of the entire value of a decedent's property at the time of his death but rather on the value of the estate received by each person under the will. *Ayers v. Chicago Title & Trust Co.*, 187 Ill. 42, 58 N. E. 318.

### **Jurisdiction of County Court.**

S. 13. The county court in the county in which the real property is situated of the decedent who was not a resident of the state, or in the county of which the deceased was a resident at the time of his death, shall have jurisdiction to hear and determine all questions in relation to the tax arising under the provisions of this act, and the county court first acquiring jurisdiction hereunder shall retain the same to the exclusion of every other.

S. 14. If it shall appear to the county court that any tax accruing under this act has not been paid according to law, it shall issue a summons summoning the persons interested in the property liable to the tax to appear before the court on a day certain not more than three months after the date of such summons, to show cause why said tax should not be paid. The process, practice and pleadings and the hearing and determination thereof, and the judgment in said court in such cases shall be the same as those now provided or which may hereafter be provided in probate cases in the county courts in this state and the fees and costs in such cases shall be the same as in probate cases in the county courts of this state.

S. 15. Whenever the treasurer of any county shall have reason to believe that any tax is due and unpaid under this act, after the refusal or neglect of the person interested in the property liable to pay said tax, to pay the same, he shall notify the state's attorney of the proper county, in writing, of such refusal to pay said tax, and the state's attorney so notified, if he has proper cause to believe a tax is due and unpaid, shall prosecute the proceeding in the county court in the proper county, as provided in section 14 of this act, for the enforcement and collection of such tax, and in such case said court shall allow as costs in the said case such fees to said attorney as he may deem reasonable.

### **Amendment of Petition.**

Where the treasurer in his original application claims a tax of three per cent after the expiration of the period within which the right to sue for the tax is limited, the application may be amended by asking that the tax be computed at different rates, depending

on the finding of the court as to the facts, as this amendment does not set up a new or different cause of action but merely corrects the statement in the original application as to the rate at which the tax should be computed. *Connell v. Crosby*, 210 Ill. 380, 71 N. E. 350.

### **Inventory.**

Under the Illinois administration statute, section 51, the court and the people have a right to compel the filing of the inventories required by the statute. The statute confers no discretion upon the executors and the state has a right to an order that the executor's inventory be filed, and a judgment rendered in the absence of the inventory should be reversed even though it is claimed that the state obtained all necessary information in its examination of witnesses. *People v. Sholem*, 244 Ill. 502, 91 N. E. 704.

Where a party makes a motion that an inventory be filed in a tax inheritance case and the judge says that he will take the motion under advisement but does not either then nor afterward make an order for the inventory, but hears the case and enters final judgment without doing so, this amounts to a denial of the motion. *People v. Sholem*, 244 Ill. 502, 91 N. E. 704.

### **Refunding.**

Ill. St. 1895, p. 303, ss. 10 and 19, do not authorize the county treasurer to repay taxes erroneously paid to him. It was intended that the state treasurer alone should have this power. *People v. Griffith*, 245 Ill. 532, 92 N. E. 313.

## **THE ADMINISTRATIVE AMENDMENTS OF 1901.**

**Ill. St. 1901, p. 269.** Approved May 10, 1901.

S. 1. Be it enacted by the People of the State of Illinois, represented in the General Assembly: That section 11 of an act entitled, "An Act to tax gifts, legacies and inheritances in certain cases, and to provide for the collection of the same," approved June 15, 1895, in force July 1, 1895, be, and the same are hereby, amended, and that additional sections to be known as section 11½ and section 21½, be, and they are hereby, added so as to read as follows:—

S. 11. In order to fix the value of property of persons whose estate shall be subject to the payment of said tax, the county judge, on application of any interested party, or upon his own motion, shall appoint some competent person as appraiser as often as, or whenever occasion may require, whose duty it shall be forthwith to give such notice by mail to all persons known to have or claim an interest in such property, and to such persons as the county judge may, by order,

direct, of the time and place he will appraise such property, and at such time and place to appraise the same at a fair market value, and for that purpose the appraiser is authorized, by leave of the county judge, to use subpoenas for and to compel the attendance of witnesses before him, and to take the evidence of such witnesses under oath concerning such property and the value thereof, and he shall make a report thereof and of such value, in writing, to said county judge, with the depositions of the witnesses examined and such other facts in relation thereto and to said matters as said county judge may, by order, require to be filed in the office of the clerk of said county court and from this report the said county judge shall forthwith assess and fix the then cash value of all estates, annuities and life estates or terms of years growing out of said estate, and the tax to which the same is liable, and shall immediately give notice by mail to all parties known to be interested therein. Any person or persons dissatisfied with the appraisement or assessment may appeal therefrom to the county court of the proper county within sixty days after the making and filing of such appraisement or assessment, on paying or giving security satisfactory to the county judge to pay all costs, together with whatever taxes shall be fixed by said court. The said appraiser shall be paid by the county treasurer out of any funds he may have in his hands on account of the inheritance tax, as by law provided, on the certificate of the county judge, such compensation as such judge may deem just for said appraiser's services as such appraiser, not to exceed ten dollars per day for each day actually and necessarily employed in said appraisement together with his actual and necessary traveling expenses and disbursements, including such witness fees paid by him.

### **"Any Person . . . May Appeal."**

The provision that any person dissatisfied with the appraisement or assessment may appeal was intended to include the state, and the people may appeal under this section from the action of the county judge in appraising property directly to the supreme court. The fact that section 11 provides for appeal only on paying or giving security satisfactory to the county judge and that the state is not required to give a bond does not affect the matter. In Illinois it would be unconstitutional to permit an appeal only by the persons interested in the property of the estate and not by the state itself. *People v. Sholem*, 238 Ill. 203, 87 N. E. 390.

S. 11½. The fees of the clerk of the county court in inheritance tax matters in the respective counties of this state, as classified in the act concerning fees and salaries, shall be as follows: —

In counties of the first and second class, for services in all proceedings in each estate before the county judge, the clerk shall receive a fee of five dollars. In all such proceedings in counties of the third class, the clerk shall receive a fee of ten dollars. Such fees shall be paid by the county treasurer, on the certificate of the county judge, out of any money in his hands on account of said tax. In counties of the third class, the attorney general of state may appoint an attorney who shall be known as the "inheritance tax attorney," and whose salary shall be not to exceed three thousand dollars per year, payable monthly, out of the state treasury upon warrants drawn by the auditor of public accounts, on vouchers

approved by the attorney general. In counties of the third class, the clerk of the county court may appoint a clerk in the office of the clerk of said court, to be known as the "inheritance tax clerk," whose compensation shall be fixed by the county judge, not to exceed fifteen hundred dollars per year, and not to exceed the fee earned in said office in inheritance tax matters, the surplus of such fees over said compensation so fixed to be turned into the county treasury. In addition to the above, the clerk of the county court shall be entitled, in all suits brought for the collection of delinquent inheritance tax, and all contested inheritance tax cases appealed from the county judge to the county court, and in all appeals from the county court to the supreme court, the same fees as are now, or which may hereafter be, allowed by law in suits at law, or in the matter of appeals at law, to or from the county court, which fees shall be taxed as costs and paid as in other cases at law; and in all cases arising under this act, including certified copies of documents or records in his office, for which no specific fees are provided, the clerk of the county court shall charge against and collect, from the person applying for or entitled to, such services, or certified copies, the same fees as are now, or which may hereafter be allowed for similar services or certified copies in other cases in said court, and for recording inheritance tax receipts required to be recorded in his office, he shall receive the same fees which now are, or hereafter may be, allowed by law to the recorder of deeds for recording similar instruments.

S. 21½. When any person interested in any property, in this state, which shall pass by will or the intestate laws of this state, shall deem the same not subject to any tax under this act, he may file his petition in the county court of the proper county to determine whether said property is subject to the tax herein provided in which petition the county treasurer and all persons known to have or claim any interest in said property shall be made parties. The county court may hear the said cause upon the relation of the parties and the testimony of witnesses, and evidence produced in open court and, if the court shall find said property is not subject to any tax, as herein provided, the court shall, by order, so determine; but if it shall appear that said property, or any part thereof, is subject to any such tax, the same shall be appraised and taxed as in other cases. An adjudication by the county court, as herein provided, shall be conclusive as to the lien of the tax herein provided upon said property, subject to appeal to the supreme court of the state by the county treasurer, or attorney general of the state, in behalf of the people, or by any party having an interest in said property. The fees and costs in all cases arising under this section shall be the same as are now, or may hereafter be, allowed by law in cases at law in the county court.

Previous to the insertion by the amendment of 1901 of section 21½ there was no provision in the Illinois inheritance law permitting an appeal from the order of the county court fixing the tax. *People v. Sholem*, 238 Ill. 203, 87 N. E. 390.

### THE CHARITABLE EXEMPTIONS OF 1901.

Ill. St. 1901, p. 268. Approved May 10, 1901.

S. 1. Be it enacted by the People of the State of Illinois, represented in the General Assembly: That an act entitled, "An Act to tax gifts, legacies and inheritances in certain cases, and to provide for the collection of the same," approved

June 15, 1895, in force July 1, 1895, be and the same is hereby, amended by adding thereto an additional and new section, exempting certain grants, gifts and bequests therein named, to be known as section 2½, as follows: —

S. 2½. When the beneficial interests of any property or income therefrom shall pass to or for the use of any hospital, religious, educational, bible, missionary, tract, scientific, benevolent or charitable purpose, or to any trustee, bishop or minister of any church or religious denomination, held and used exclusively for the religious, educational or charitable uses and purposes of such church or religious denomination, institution or corporation, by grant gift, bequest or otherwise, the same shall not be subject to any such duty or tax, but this provision shall not apply to any corporation which has the right to make dividends or distribute profits or assets among its members.

### **Prospective Only.**

Amendments to the inheritance laws must be treated as prospective in the absence of language indicating they are retrospective in character; so this statute had no effect upon the jurisdiction of the court to collect taxes due under the act of 1895, but merely extended the exemptions in an estate where death occurred after the passage of the act of 1901. Where the testator died a month before the statute of 1901 went into effect, it had no application to the estate, as the right to a tax had accrued to the state under the former statute on the death of the testator. The amendment did not deprive the court of jurisdiction to collect the tax. *Provident Hospital & Training Assn. v. People*, 198 Ill. 495, 64 N. E. 1031. This statute does not affect the right to collect a tax on bequests taxable under the statute of 1895 and exempt by this statute. The act of 1901 does not in terms repeal the former act. *Connell v. Crosby*, 210 Ill. 380, 71 N. E. 350.

**Charitable bequests** should be upheld and given effect whenever possible, and because the statute now exempts these bequests from the payment of the inheritance tax is no reason for departing from or modifying this ancient rule of construction favoring charitable gifts. So a certain gift to the public authorities for the erection of a drinking fountain or drinking basin for horses and in connection therewith a bronze statue of a certain horse, together with a record of his performances, is exempt from the inheritance tax as a charitable gift. The courts in determining whether or not a gift is charitable will not look to the motives of the donor, but rather to the nature of the gift and the object which will be attained by it. *In re Graves*, 242 Ill. 23, 89 N. E. 672, 134 Am. S. R. 302.

### **Exemptions Confined to Domestic Corporations.**

The statute of 1901 gives an exemption to charitable corporations which pay no dividends, but confines the exemption to corpora-

tions organized under the laws of Illinois. This distinction is valid and one which the state has a right to make. This distinction is not contrary to the fourteenth amendment to the federal constitution; as if a state exempt property bequeathed for charitable and educational purposes from taxation it is not unreasonable or arbitrary to require the charity to be exercised or education to be bestowed within her borders and for her people whether exercised through persons or corporations. *Board of Education v. Illinois*, 203 U. S. 553, 563, 27 S. Ct. 171, 51 L. Ed. 314; affirming *In re Speed*, 216 Ill. 23, 74 N. E. 809, 108 Am. St. Rep. 189.

### THE PRESENT ACT.

AN ACT TO TAX GIFTS, LEGACIES, INHERITANCES, transfers, appointments and interests in certain cases, and to provide for the collection of the same, and repealing certain acts therein named. Approved June 14, 1909. (p. 311.)

#### What Property is Subject to Tax. — Rates. — Exemptions.

S. 1. A tax shall be and is hereby imposed upon the transfer of any property, real, personal or mixed, or of any interest therein or income therefrom, in trust or otherwise, to persons, institutions or corporations, not hereinafter exempted, in the following cases:—

1. When the transfer is by will or by the intestate laws of this state, from any person dying, seized or possessed of the property while a resident of the state.

2. When the transfer is by will or intestate laws of property within the state and the decedent was a non-resident of the state at the time of his death.

3. When the transfer is of property made by a resident, or by a non-resident when such non-resident's property is within this state, by deed, grant, bargain, sale or gift, made in contemplation of the death of the grantor, vendor or donor, or intended to take effect in possession or enjoyment at or after such death. When any such person, institution or corporation becomes beneficially entitled in possession or expectancy to any property or the income therefrom, by any such transfer, whether made before or after the passage of this act.

4. Whenever any person, institution or corporation shall exercise a power of appointment derived from any disposition of property made either before or after the passage of this act, such appointment, when made, shall be deemed a taxable transfer under the provisions of this act, in the same manner as though the property to which such appointment relates belonged absolutely to the donee of such power and had been bequeathed or devised by such donee by will; and whenever any person or corporation possessing such a power of appointment so derived shall omit or fail to exercise the same within the time provided therefor, in whole or in part, a transfer taxable under the provisions of this act shall be deemed to take place to the extent of such omission or failure, in the same manner as though the persons or corporations thereby becoming entitled to the possession or enjoyment of the property to which such power related had succeeded thereto by a will of the donee of the power failing to exercise such power, taking effect at the time of such omission or failure.

When the beneficial interest to any property or income therefrom shall pass to or for the use of any father, mother, husband, wife, child, brother, sister, wife or widow of the son, or the husband of the daughter, or any child or children adopted as such in conformity with the laws of the state of Illinois, or to any person to whom the deceased, for not less than ten years prior to death, stood in the acknowledged relation of a parent: *Provided, however*, such relationship began at or before said person's fifteenth birthday and was continuous for said ten years thereafter: *And, provided, also*, that the parents of such person so standing in such relation shall be deceased when such relationship commenced, or to any lineal descendant of such decedent born in lawful wedlock. In every such case the rate of tax shall be two dollars on every one hundred dollars of the clear market value of such property received by each person, when the amount so received exceeds in amount the sum of one hundred thousand dollars, and one dollar on each one hundred dollars of the clear market value of such property received by each person when the amount so received is one hundred thousand dollars or less; and at and after the same rates, respectively, for every less amount: *Provided*, that any gift, legacy, inheritance, transfer, appointment or interest which may be valued at a less sum than twenty thousand dollars shall not be subject to any such duty or taxes, and the tax is to be levied in the above cases only upon the excess of twenty thousand dollars received by each person. When the beneficial interest to any property or income therefrom shall pass to or for the use of any uncle, aunt, niece or nephew or any lineal descendant of the same, in any such case the rate of such tax shall be four dollars on every one hundred dollars of the clear market value of such property received by each person on the excess of two thousand dollars so received by each person when the amount so received exceeds the sum of twenty thousand dollars; and two dollars on every one hundred dollars of the clear market value of such property received by each person on the excess of two thousand dollars so received by each person when the amount so received is twenty thousand dollars or less. In all other cases the rate shall be as follows: On each and every one hundred dollars of the clear market value of all property and at the same rate for any less amount; on all transfers of ten thousand dollars and less, three dollars; on all transfers over ten thousand dollars and not exceeding twenty thousand dollars, four dollars; on all transfers over twenty thousand dollars and not exceeding fifty thousand dollars, five dollars; on all transfers over fifty thousand dollars and not exceeding one hundred thousand dollars, six dollars; and on all transfers over one hundred thousand dollars, ten dollars: *Provided*, that any gift, legacy, inheritance, transfer, appointment or interest which may be valued at a less sum than five hundred dollars shall not be subject to any duty or tax.

[See notes to the Act of 1895, *ante*, p. 406 *et seq.*]

#### **Appraisal of Life Interests. — Lien. — Bond.**

S. 2. When any property or interest therein or income therefrom shall pass or be limited for the life of another, or for a term of years, or to terminate on the expiration of a certain period the property of the decedent so passing shall be appraised immediately after the death of the decedent, and the value of the said life estate, term of years or period of limitation shall be fixed upon mortality tables, using the interest rate or income rate of five per cent; and the value of the remainder in said property so limited shall be ascertained by deducting the value of the life estate, term of years or period of limitation from the fair market value of



the property so limited, and the tax on the several estate or estates, remainder or remainders, or interests shall be immediately due and payable to the treasurer of the proper county, together with interest thereon, and said tax shall accrue as provided in section three (3) of this act, and remain a lien upon the entire property limited until paid: *Provided*, that the person or persons, body politic or corporate, beneficially interested in property chargeable with said tax, elect not to pay the same until they shall come into actual possession or enjoyment of such property, then in that case said person or persons, or body politic or corporate, shall give bond to the people of the state of Illinois in a penal sum three times the amount of the tax arising from such property, limited with such sureties as the county judge may approve, conditioned for the payment of the said tax and interest thereon at such time or period as they or their representatives may come into the actual possession or enjoyment of said property; which bond shall be filed in the office of the county clerk of the proper county: *Provided, further*, that such person or persons, body politic or corporate, shall make a full verified return of said property to said county judge and file the same in his office within one year from the death of the decedent, with the bond and sureties as above provided; and further, said person or persons, body politic or corporate shall renew said bond every five years after the date of the death of decedent.

[See notes to the Act of 1895, *ante*, p. 418.]

#### **Interest. — Bond.**

S. 3. All taxes imposed by this act, unless otherwise herein provided for, shall be due and payable, at the death of the decedent, and interest at the rate of six per cent per annum shall be charged and collected thereon for such time as said taxes are not paid: *Provided*, that if said tax is paid within six months from the accruing thereof, interest shall not be charged or collected thereon, but a discount of five per cent shall be allowed and deducted from said tax; and in all cases where the executors, administrators or trustees do not pay such tax within one year from the death of the decedent, they shall be required to give a bond in the form and to the effect prescribed in section 2 of this act, for the payment of said tax, together with interest.

[See notes to the Act of 1895, *ante*, p. 420.]

#### **Duties of Executors and Administrators.**

S. 4. Any administrator, executor or trustee having any charge or trust in legacies or property for distribution subject to the said tax shall deduct the tax therefrom, or if the legacy or property be not money he shall collect a tax thereon upon the appraised value thereof from the legatee or person entitled to such property, and he shall not deliver or be compelled to deliver any specific legacy or property subject to tax to any person until he shall have collected the tax thereon; and whenever any such legacy shall be charged upon or payable out of real estate the heir or devisee before paying the same, shall deduct said tax therefrom, and pay the same to the executor, administrator or trustee, and the same shall remain a charge on such real estate until paid, and the payment thereof shall be enforced by the executor, administrator or trustee in the same manner that the said payment of said legacies might be enforced, if, however, such legacy be given in money to any person for a limited period, he shall retain the tax upon the whole amount, but if it be not in money he shall make application to the court

having jurisdiction of his accounts, to make an apportionment if the case requires it of the sum to be paid into his hands by such legatees, and for such further order relative thereof as the case may require.

[See notes to the Act of 1895, *ante*, p. 421.]

#### **Liability of Executors and Others.**

S. 5. All executors, administrators and trustees shall be personally liable for the payment of taxes and interest, and where proceedings for collection of taxes assessed be had, said executors, administrators and trustees shall be personally liable for the expenses, costs and fees of collection. They shall have full power to sell so much of the property of the decedent as will enable them to pay said tax, in the same manner as they may be enabled to do by law, for the payment of duties of their testators and intestates, and the amount of said tax shall be paid as hereinafter directed.

#### **Payments. — Receipts.**

S. 6. Every sum of money retained by any executor, administrator or trustee, or paid into his hands for any tax on any property, shall be paid by him within thirty days thereafter to the treasurer of the proper county, and the said treasurer or treasurers shall give, and every executor, administrator or trustee shall take duplicate receipts from him of said payments, one of which receipts he shall immediately send to the state treasurer, whose duty it shall be to charge the treasurer so receiving the tax with the amount thereof, and shall seal said receipt with the seal of his office and countersign the same and return it to the executor, administrator or trustee, whereupon it shall be a proper voucher in the settlement of his accounts; but the executor, administrator or trustee shall not be entitled to credit in his accounts or be discharged from liability for such tax unless he shall purchase a receipt so sealed and countersigned by the treasurer and a copy thereof certified by him.

#### **Duty to Give Information.**

S. 7. Whenever any of the real estate of which any decedent may die seized shall pass to any body politic or corporate, or to any person or persons, or in trust for them, it shall be the duty of the executor, administrator or trustee of such decedent to give information thereof in writing to the treasurer of the county where said real estate is situated, within six months after they undertake the execution of their expected duties, or if the fact be not known to them within that period, then within one month after the same shall have come to their knowledge.

[As to inventory see notes to the Act of 1895, s. 15, *ante*, p. 424.]

#### **Refund to Pay Debts.**

S. 8. Whenever debts shall be proved against the estate of the decedent after distribution of legacies from which the inheritance tax has been deducted in compliance with this act, and the legatee is required to refund any portion of the legacy, a proportion of the said tax shall be repaid to him by the executor or administrator if the said tax has not been paid into the state or county treasury, or by the county treasurer if it has been so paid.

#### **Foreign Executors Transferring Stocks.**

S. 9. If a foreign executor, administrator or trustee shall assign or transfer any stock or obligations in this state standing in the name of a decedent or in trust

for a decedent, liable to any such tax the tax shall be paid to the treasurer of the proper county on the transfer thereof. No safe deposit company, trust company, corporation, bank or other institution, person or persons having in possession or under control securities, deposits, or other assets belonging to or standing in the name of a decedent who was a resident or non-resident or belonging to, or standing in the joint names of such a decedent and one or more persons, including the shares of the capital stock of, or other interests in, the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer herein provided, shall deliver or transfer the same to the executors, administrators or legal representatives of said decedent, or to the survivor or survivors when held in the joint names of a decedent and one or more persons, or upon their order or request, unless notice of the time and place of such intended delivery or transfer be served upon the state treasurer and attorney general at least ten days prior to said delivery or transfer; nor shall any such safe deposit company, trust company, corporation, bank or other institution, person or persons deliver or transfer any securities, deposits or other assets belonging to or standing in the name of a decedent, or belonging to, or standing in the joint names of a decedent and one or more persons, including the shares of the capital stock of, or other interests in, the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer, without retaining a sufficient portion or amount thereof to pay any tax or interest which may thereafter be assessed on account of the delivery or transfer of such securities, deposits or other assets, including the shares of the capital stock of, or other interests in, the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer under the provisions of this article, unless the state treasurer and attorney general consent thereto in writing. And it shall be lawful for the state treasurer, together with the attorney general, personally or by representatives, to examine said securities, deposits or assets at the time of such delivery or transfer. Failure to serve such notice or failure to allow such examination, or failure to retain a sufficient portion or amount to pay such tax and interest as herein provided shall render said safe deposit company, trust company, corporation, bank or other institution, person or persons liable to the payment of the amount of the tax and interest due or thereafter to become due upon said securities, deposits or other assets, including the shares of the capital stock of, or other interests in, the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer, and in addition thereto, a penalty of one thousand dollars; and the payment of such tax and interest thereon, or of the penalty above prescribed, or both, may be enforced in an action brought by the state treasurer in any court of competent jurisdiction.

#### **Refunding Excess of Tax Paid.**

S. 10. When any amount of said tax shall have been paid erroneously to the state treasury, it shall be lawful for him on satisfactory proof rendered to him by said county treasurer of said erroneous payments to refund and pay to the executor, administrator or trustee, person or persons who have paid any such tax in error the amount of such tax so paid: *Provided*, that all applications for the repayment of said tax shall be made within two years from the date of said payment.

[See notes to the Act of 1895, *ante*, p. 424.]

**Appraisal.**

S. 11. In order to fix the value of property of persons whose estate shall be subject to the payment of said tax, the county judge, on application of any interested party, or upon his own motion shall appoint some competent person as appraiser as often as or whenever occasion may require, whose duty it shall be forthwith to give such notice by mail, to all persons known to have or claim an interest in such property, and to such persons as the county judge may, by order, direct, of the time and place he will appraise such property, and at such time and place to appraise the same at a fair market value, and for that purpose the appraiser is authorized, by leave of the county judge, to use subpoenas for and to compel the attendance of witnesses before him, and to take the evidence of such witnesses under oath concerning such property and the value thereof, and he shall make a report thereof and of such value in writing, to said county judge, with the depositions of the witnesses examined and such other facts in relation thereto and to said matters as said county judge may, by order, require to be filed in the office of the clerk of said county court, and from this report the said county judge shall forthwith assess and fix the then cash value of all estates, annuities and life estates or terms of years growing out of said estate, and the tax to which the same is liable, and shall immediately give notice by mail to all parties known to be interested therein. Any person or persons dissatisfied with the appraisalment or assessment may appeal therefrom to the county court of the proper county within sixty days after the making and filing of such appraisalment or assessment on paying or giving security satisfactory to the county judge to pay all costs, together with whatever taxes shall be fixed by said court. The said appraiser shall be paid by the county treasurer out of any funds he may have in his hands on account of the inheritance tax collected in said appraisalment, as by law provided, on the certificate of the county judge, such compensation as such judge may deem just for said appraiser's services as such appraiser, not to exceed ten dollars per day for each day actually and necessarily employed in said appraisalment, together with his actual and necessary traveling expenses and disbursements, including such witness fees paid by him.

[See notes to the Acts of 1895 and 1901, *ante*, pp. 422, 425.]

**Fees. — Attorneys.**

S. 12. The fees of the clerk of the county court in inheritance tax matters in the respective counties of this state, as classified in the act concerning fees and salaries, shall be as follows: —

In counties of the first and second class, for services in all proceedings in each estate before the county judge the clerk shall receive a fee of five dollars. In all such proceedings in counties of the third class, the clerk shall receive a fee of ten dollars. Such fees shall be paid by the county treasurer, on the certificate of the county judge, out of any money in his hands, on account of said tax. In counties of the third class, the attorney general of the state may appoint an attorney, who shall be known as the "inheritance tax attorney," and whose salary shall be not to exceed three thousand dollars per year, payable monthly out of the state treasury upon warrants drawn by the auditor of public accounts, on vouchers approved by the attorney general. In counties of the third class, the clerk of the county court may appoint a clerk in the office of the clerk of said court, to be known as the "inheritance tax clerk," whose compensation shall be fixed by the

county judge, not to exceed fifteen hundred dollars per year, and not to exceed the fee earned in said office in inheritance tax matters, the surplus of such fees over said compensation so fixed to be turned into the county treasury. In addition to the above, the clerk of the county court shall be entitled, in all suits brought for the collection of delinquent inheritance tax, and all contested inheritance tax cases appealed from the county judge to the county court, and in all appeals from the county court to the supreme court, the same fees as are now, or which may hereafter be, allowed by law in suits at law, or in the matter of appeals at law, to or from the county court, which fees shall be taxed as costs and paid as in other cases at law; and in all cases arising under this act, including certified copies of documents or records in his office, for which no specific fees are provided, the clerk of the county court shall charge against and collect from the person applying for, or entitled to such services, or certified copies, the same fees as are now, or which may hereafter be, allowed for similar services or certified copies in said court, and for recording inheritance tax receipts required to be recorded in his office, he shall receive the same fees which now are or hereafter may be allowed by law to the recorder of deeds for recording similar instruments.

**Appraiser. — Penalty for Receiving Reward.**

S. 13. Any appraiser appointed by this act, who shall take any fee or reward from any executor, administrator, trustee, legatee, next of kin or heir of any decedent, or from any other person liable to pay said tax or any portion thereof, shall be guilty of a misdemeanor, and upon conviction in any court having jurisdiction of misdemeanors, he shall be fined not less than two hundred and fifty dollars nor more than five hundred dollars and imprisoned not exceeding ninety days; and in addition thereto the county judge shall dismiss him from such service.

**Jurisdiction of County Court Over Property of Non-Residents.**

S. 14. The county court in the county in which the property is situated of the decedent, who was not a resident of the state or in the county of which the deceased was a resident at the time of his death, shall have jurisdiction to hear and determine all questions in relation to the tax arising under the provisions of this act, and the county court first acquiring jurisdiction hereunder shall retain the same to the exclusion of every other.

[See notes to the Act of 1895, *ante*, p. 423.]

**Proceedings for Collection.**

S. 15. If it shall appear to the county court that any tax accruing under this act has not been paid according to law, it shall issue a summons summoning the persons interested in the property liable to the tax to appear before the court on a day certain, not more than three months after the date of such summons, to show cause why said tax should not be paid. The process, practice and pleadings, and the hearing and determination thereof, and the judgment in said court in such cases shall be the same as those now provided, or which may hereafter be provided in probate cases in the county courts in this state, and the fees and costs in such cases shall be the same as in probate cases in the county courts of this state.

[See notes to the Act of 1895, *ante*, p. 423.]

**State's Attorney to Enforce Payment. — Fees.**

S. 16. Whenever it appears that any tax is due and unpaid under this act, and the persons, institutions or corporations liable for said tax have refused or neglected

to pay the same, it shall be the duty of the state's attorney, in counties of the first and second class, and the inheritance tax attorney, in counties of the third class, if he has proper cause to believe a tax is due and unpaid, to prosecute the collection of same in the county court in the proper county, in the manner provided in section fifteen of this act, for the enforcement and collection of such tax; and in every such case said court shall allow as costs in said case, such fees to said attorney as the court may deem reasonable.

[See notes to the Act of 1895, *ante*, p. 423.]

#### **Reports.**

S. 17. The county judge and county clerk of each county shall, every three months, make a statement in writing to the county treasurer of the county of the property from which or the party from whom he has reason to believe a tax under this act is due and unpaid.

#### **Expenses.**

S. 18. Whenever the county judge of any county shall certify that there was probable cause for issuing a summons and taking the proceedings specified in sections 15 and 16 of this act, the state treasurer shall pay or allow to the treasury of any county all expenses incurred for service of summons and his other lawful disbursements that has not otherwise been paid.

#### **Records.**

S. 19. The treasurer of the state shall furnish to each county judge a book, in which he shall enter the returns made by appraisers, the cash value of annuities, life estates and terms of years and other property fixed by him, and the tax assessed thereon and the amounts of any receipts for payments thereof filed with him, which books shall be kept in the office of the county judge as a public record.

#### **Reports.**

S. 20. The treasurer of each county shall collect and pay to the state treasurer all taxes that may be due and payable under this act, who shall give him a receipt therefor, of which collection and payment he shall make a report under oath to the auditor of public accounts, on the first Monday in March and September of each year, stating for what estate paid, and in such form and containing such particulars as the auditor may prescribe; and for all said taxes collected by him and not paid to the state treasurer by the first day of October and April of each year, he shall pay interest at the rate of ten per cent per annum.

#### **Fees of County Treasurer.**

S. 21. The treasurer of each county shall be allowed to retain two per cent on all taxes paid and accounted for by him under this act in full for his services in collecting and paying the same, in addition to his salary or fees now allowed by law.

#### **Receipts.**

S. 22. Any person or body politic or corporate shall, upon the payment of the sum of fifty cents, be entitled to a receipt from the county treasurer of any county or the copy of the receipt at his option that may have been given by said treasurer for the payment of any tax under this act, to be sealed with the seal of

his office, which receipt shall designate on what real property, if any, of which any deceased may have died seized, said tax has been paid and by whom paid, and whether or not it is in full of said tax; and said receipt may be recorded in the clerk's office of said county in which the property may be situated, in a book to be kept by said clerk for such purpose.

#### **Assessment on Petition of Owner.**

S. 23. When any person interested in any property in this state, which shall have been transferred within the meaning of this act shall deem the same not subject to any tax under this act, he may file his petition in the county court of the proper county to determine whether said property is subject to the tax herein provided, in which petition the county treasurer and all persons known to have or claim any interest in said property shall be made parties. The county court may hear the said cause upon the relation of the parties and the testimony of witnesses, and evidence produced in open court, and, if the court shall find said property is not subject to any tax, as herein provided, the court shall, by order, so determine; but if it shall appear that said property, or any part thereof, is subject to any such tax, the same shall be appraised and taxed as in other cases. An adjudication by the county court, as herein provided, shall be conclusive as to the lien of the tax herein provided upon said property, subject to appeal to the supreme court of the state by the county treasurer, or attorney general of the state, in behalf of the people, or by any party having an interest in said property. The fees and costs in all cases arising under this section shall be the same as are now or may hereafter be allowed by law in cases at law in the county court.

[See notes to the Act of 1901, *ante*, p. 426.]

#### **Lien. — Limitations.**

S. 24. The lien of the collateral inheritance tax shall continue until the said tax is settled and satisfied: *Provided*, that said lien shall be limited to the property chargeable therewith: *And, provided, further*, that all inheritance taxes shall be sued for within five years after they are due and legally demandable, otherwise they shall be presumed to be paid and cease to be a lien as against any purchaser of real estate.

#### **Contingent or Defeasible Interests.**

S. 25. When property is transferred or limited in trust or otherwise, and the rights, interest or estates of the transferees or beneficiaries are dependent upon contingencies or conditions whereby they may be wholly or in part created, defeated, extended or abridged, a tax shall be imposed upon said transfer at the highest rate which, on the happening of any of the said contingencies or conditions, would be possible under the provisions of this article, and such tax so imposed shall be due and payable forthwith by the executors or trustees out of the property transferred: *Provided, however*, that on the happening of any contingency whereby the said property, or any part thereof is transferred to a person, corporation or institution exempt from taxation under the provisions of the inheritance tax laws of this state, or to any person, corporation or institution taxable at a rate less than the rate imposed and paid, such person, corporation or institution shall be entitled to a return of so much of the tax imposed and paid as is the difference between the amount paid and the amount which said person, corporation or institution should

pay under the inheritance tax laws, with interest thereon at the rate of three per centum per annum from the time of payment. Such return of over-payment shall be made in the manner provided for refunds under section eight.

Estates or interests in expectancy which are contingent or defeasible and in which proceedings for the determination of the tax have not been taken or where the taxation thereof has been held in abeyance, shall be appraised at their full, undiminished value when the persons entitled thereto shall come into the beneficial enjoyment or possession thereof, without diminution for or on account of any valuation theretofore made of the particular estates for the purposes of taxation, upon which said estates or interests in expectancy may have been limited.

Where an estate for life or for years can be divested by the act or omission of the legatee or devisee it shall be taxed as if there were no possibility of such divesting.

### **Compromise of Tax.**

S. 26. The state treasurer, by and with the consent of the attorney general expressed in writing, is hereby empowered and authorized to enter into an agreement with the trustees of any estate in which remainders or expectant estates have been of such a nature, or so disposed and circumstanced that the taxes therein were held not presently payable, or where the interests of the legatees or devisees were not ascertainable under an act to tax gifts, legacies, and inheritances, etc., in force July 1, 1885, and amendments thereto; and to compound such taxes upon such terms as may be deemed equitable and expedient; and to grant discharge to said trustees upon the payment of the taxes provided for in such composition: *Provided, however*, that no such composition shall be conclusive, in favor of said trustees as against the interests of such *cestuis que* trust as may possess either present rights of enjoyment, or fixed, absolute or indefeasible rights of future enjoyment, or of such as would possess such rights in the event of the immediate termination of particular estates, unless they consent thereto, either personally, when competent, or by guardian. Composition or settlement made or effected under the provisions of this section shall be executed in triplicate, and one copy filed in the office of the state treasurer, one copy in the office of the clerk of the county court wherein the appraisement was had or the tax was paid, and one copy delivered to the executors, administrators or trustees who shall be parties thereto.

### **Guardians ad litem.**

S. 27. If it appears at any stage of an inheritance tax proceeding that any person known to be interested therein is an infant or person under disability, the county judge may appoint a special guardian of such infant or person under disability.

### **Exemptions to Churches, etc.**

S. 28. When the beneficial interests of any property or income therefrom shall pass to or for the use of any hospital, religious, educational, bible, missionary, tract, scientific, benevolent or charitable purpose, or to any trustee, bishop or minister of any church or religious denomination, held and used exclusively for the religious, educational or charitable uses and purposes of such church or religious denomination, institution or corporation, by grant, gift, bequest or otherwise, the same shall not be subject to any such duty or tax, but this provision



shall not apply to any corporation which has the right to make dividends or distribute profits or assets among its members.

[See notes to the Act of 1901, *ante*, p. 427.]

#### **Transfer Defined.**

S. 29. When property, or any interest therein or income therefrom, shall pass to or for the use of any person, institution or corporation by the death of another by deed, instrument or memoranda, such passing shall be deemed a transfer within the meaning of this act, and taxable at the same rates, and be appraised in the same manner and subjected to the same duties and liabilities as any other form of transfer provided in this act.

#### **Certified Copies. — Fees.**

S. 30. On the written request of the county treasurer or county judge, in the county wherein an appraisalment has been initiated, the clerk of the county court and in counties having a probate court, the clerk of the probate court and the recorder of deeds shall furnish certified copies of all papers within their care or custody, or records material in the particular appraisalment, and the said clerk and recorder shall receive the same fee or compensation for such certified copies as they would be entitled by law in other cases, which shall be paid to them by the county treasurer of the proper county, out of moneys in his hands on account of inheritance tax collections, on the presentation of itemized bills therefor, approved by the county judge of the proper county.

#### **Repeal.**

S. 31. That "An Act to tax gifts, legacies and inheritances in certain cases, and to provide for the collection of the same," approved June 15, 1895, in force July 1, 1895, as amended by act approved May 10, 1901, in force July 1, 1901, and all laws or parts of laws inconsistent herewith be and the same are hereby repealed: *Provided, however*, that such repeal shall in no wise affect any suit, prosecution or court proceeding pending at the time this act shall take effect, or any right which the state of Illinois may have at the time of the taking effect of this act, to claim a tax upon any property under the provisions of the act or acts hereby repealed, for which no proceeding has been commenced; and all appeals and rights of appeal in all suits pending, or appeals from assessments of tax made by appraisers' reports, orders fixing tax or otherwise existing in this state at the time of the taking effect of this act.

## INDIANA.

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### **Constitutional Limitations.**

The proposed Indiana constitution of 1911 contains no specific reference to inheritance taxes.

#### **Indiana Constitution, 1851, a. 10, s. 1.**

The general assembly shall provide, by law, for a uniform and equal rate of assessment and taxation; and shall prescribe such regulations as shall secure a just valuation for taxation of all property, both real and personal, excepting such only for municipal, educational, literary, scientific, religious or charitable purposes, as may be specially exempted by law.

### **The Present Situation.**

Indiana has no inheritance tax and has never had an inheritance tax. An attempt to pass such a law in 1911 failed.

## IOWA.

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### In General.

Iowa adopted a collateral inheritance tax in 1896. Inheritances to father, mother, husband, wife, lineal descendant, adopted child, step child, lineal descendant of adopted child or step child are exempt. The exemption applies to the estate as a whole rather than to the individual shares.

A heavy special tax on non-resident aliens was added to the act in 1904, the validity of which has not been passed upon by the courts, but it would be very surprising if it should not be held that it is in violation of most of the present treaties with the important foreign countries. (See *ante*, p. 49.)

The act of 1911 compiled the existing law, improving its form and arrangement, and omitting a proposed graduated direct inheritance tax.

Iowa taxes stock of an Iowa corporation owned by a non-resident, and the corporation is held responsible for the tax. Iowa also claims a tax on the stock of a non-resident in a foreign corporation which owns property in Iowa. Safe deposit companies and kindred institutions are made liable for the tax unless they notify the state treasurer before delivering over securities to the representative of an estate. This tax has been producing between \$150,000 and \$200,000 annually.

### List of Statutes.

1896.	Statutes of Iowa,	26 G. A., c. 28.
1898.	" " "	27 G. A., c. 37.
1900.	" " "	28 G. A., c. 51.
1902.	" " "	29 G. A., c. 55, s. 1.
1902.	" " "	29 G. A., c. 63.
1904.	" " "	30 G. A., c. 51.
1906.	" " "	31 G. A., c. 54-55.
1909.	" " "	33 G. A., c. 92.
1911.	" " "	34 G. A., c. 68.

Code of Iowa, 1897, c. 4, ss. 1467-1481 inc., p. 550.

Supplement to Code of Iowa, 1902, pp. 145-158. This includes amendments to the code and rules and regulations relating to the assessment and collection of the collateral inheritance tax.

Supplement to the Code of Iowa, 1907, c. 4, pp. 307-322. This includes amendments to the code and rules and regulations relating to the assessment and collection of the collateral inheritance tax.

The code and supplements above referred to contain the general laws cited above with the addition of the rules and regulations aforesaid.

### **Constitutional Limitations.**

#### **Iowa Constitution, 1857, a. 1, s. 6.**

All laws of a general nature shall have a uniform operation; the general assembly shall not grant to any citizen or class of citizens, privileges or immunities, which upon the same terms shall not equally belong to all citizens.

#### **A. 3, s. 30.**

The general assembly shall not pass local or special laws in the following cases:—

- For the assessment and collection of taxes for state, county, or road purposes;
- For laying out, opening, and working roads for highways;
- For changing the names of persons;
- For the incorporation of cities and towns;
- For vacating roads, town plats, streets, alleys, or public squares;
- For locating or changing county seats.

In all the cases above enumerated, and in all other cases where a general law can be made applicable, all laws shall be general, and of uniform operation throughout the state; and no law changing the boundary lines of any county shall have effect until upon being submitted to the people of the counties affected by the change, at a general election, it shall be approved by a majority of the votes in each county, cast for and against it.

### **THE ACT OF 1896.**

#### **Nature of Statute.**

This statute is not a tax upon property but a tax upon the succession. *McGhee v. State*, 105 Iowa 9, 74 N. W. 695.

#### **Constitutionality.**

This statute is unconstitutional on account of the omission of any provision for notice to the heirs or devisees before appraisal of the property for the purposes of inheritance tax. The court relies upon *In re McPherson*, 104 N. Y. 321, 10 N. E. 685, and concludes that the statute is a deprivation of property without due process of law, in that it gives the party to be taxed no right to be heard as to the amount of tax. The court notices the claim that the tax is against the estate alone and remarks that the claim is not against the estate alone but as a rule the administrator has

nothing to do with the real estate. Section 15, giving the district court jurisdiction to hear and determine questions relating to the tax, does not afford such hearing as avoids the constitutional objection, as it does not give the court authority to attack the valuation for the purposes of taxation. *Ferry v. Campbell*, 110 Iowa 290, 81 N. W. 604, 50 L. R. A. 92.

### **Retroactive.**

There is nothing to prevent the state from taxing estates undistributed even if the act is passed subsequently to the date of death. *Attorney General v. Middleton*, 3 Hurl. & N. 124, *Lacy v. State Treasurer* (Iowa 1909), 121 N. W. 179, 184. (McClain, J., dissenting.)

A constitutional defect in the statute consisting of want of notice on appraisal can be cured after the death of the testator by a retroactive amendment providing for notice. *Ferry v. Campbell*, 110 Iowa 290, 81 N. W. 604, 50 L. R. A. 92.

Retroactive effect of the act of 1898, see further, *infra*, p. 452,

### **When Law Became Effective.**

Where the testator died in 1895 and the estate was not distributed before July 4, 1896, the Iowa collateral inheritance tax, which took effect July 4, 1896, could not apply to it. The right to the property attached *eo instante* upon the decedent's death and is not within the terms of the statute. *Gilbertson v. Ballard*, 125 Iowa 420, 101 N. W. 108.

The testator died in 1897 after the passage of the collateral inheritance law, but before it had been made valid and enforceable by amending the unconstitutional provision as to appraisement. Before this amendatory act went into effect the executors were appointed and distributed the estate without any authority from the probate court and before the executors had filed proof of notice of their appointment or an inventory and before the expiration of the time for filing claims. The probate court still had jurisdiction of the estate and the payment could not affect the inheritance law where no final accounting was made until after the amendatory act went into effect. *Montgomery v. Gilbertson*, 134 Iowa 291, 111 N. W. 964, 10 L. R. A. N. S. 986.

### **When Law Effective on Agreement Dependent on Death.**

The testator died before 1892 and in that year the devisee of certain land entered into an agreement with the collateral heirs by which the devisee was to have the use of the land for his life and on

his death that it should go over to the collateral heirs, this agreement being made in consideration that the collateral heirs would not contest the will. The devisee died in 1906 and the court holds that the interest acquired by the collateral heirs is subject to the tax, as the statute is very clear and applies to all cases where wills, grants, deeds, etc., are made or intended to take effect in possession or enjoyment after the death of the grantor or donor. Here, even if the title passed either mediately or immediately from testator, it did not take effect either in possession or enjoyment until after the death of the devisee, the estate of the testator was subject to the control of the district court in virtue of the contract for a long time after the collateral inheritance law went into effect, and by reason of that fact the land was subject to the tax. The collateral heirs by making a contract with the devisee surrendered their right to take immediate possession and enjoyment of the property and if they now have title through the testator they by their own acts delayed the determination of their rights until after the collateral inheritance tax law went into effect. Whether the collateral heirs took under the will of the testator or not it is very clear that the property did not pass by will, deed, grant, etc., to take effect in possession or enjoyment immediately. Possession and enjoyment were clearly postponed until the death of the devisee. The payment of a tax can only be defeated by such a *bona fide* conveyance as parts absolutely with the title, possession and enjoyment during the grantor's lifetime. The court considered the suggestion that as the contract was made before the passage of the collateral inheritance law this law cannot apply, for the reason that it impairs the obligations of a contract and deprives the collateral heirs of their property without due process of law. The court answers this suggestion by showing that until the death of the devisee it was entirely unsettled as to who would get the property at the time of his death, as it depended on the survival of the collateral heirs. The time of possession and enjoyment was postponed until the death of the devisee, and the estate of the original testator was still undistributed. It was therefore entirely competent for the legislature to impose a tax upon the right to receive in possession and enjoyment although the right was given by a contract.

The majority of the court finds, however, that certain land which was not devised directly to the devisee but which was covered by the contract is not subject to the tax, for the reason

that it vested immediately upon the death of the testator in the collateral heirs, and cannot be made subject to a tax created by a subsequent act of the legislature.

Deemer, J., who writes the majority opinion, dissents from this last conclusion, believing that by the contract the vesting in possession and enjoyment was postponed until the death of the devisee and that until that event it was uncertain who might take. *Lacy v. State Treasurer* (Iowa 1909), 121 N. W. 179. (McClain, J., dissenting.)

**Iowa St. 1896, c. 28.** Approved April 14, 1896, in effect July 4, 1896.

**S. 1. Transfers taxable. — Rates. — Exemptions.** All property within the jurisdiction of this state, and any interest therein, whether belonging to the inhabitants of this state or not, and whether tangible or intangible, which shall pass by will or by the intestate laws of this or any other state, or by deed, grant, sale, or gift made or intended to take effect in possession or in enjoyment after the death of the grantor, or donor, to any person in trust or otherwise, other than to or for the use of the father, mother, husband, wife, lineal descendant, adopted child, the lineal descendant of an adopted child of a decedent, or to or for charitable, educational or religious societies or institutions within this state, shall be subject to a tax of five per centum of its value, above the sum of one thousand dollars, after the payment of all debts, for the use of the state; and all administrators, executors and trustees, and any such grantee under a conveyance, and any such donor under a gift, made during the grantor's or donor's life, shall be respectively liable for all such taxes to be paid by them respectively, except as herein otherwise provided, with lawful interest as hereinafter set forth, until the same shall have been paid. The tax aforesaid shall be and remain a lien on such estate from the death of the decedent until paid. (Code, s. 1467.)

### **Levied on Death.**

The inheritance tax is levied at the date of the testator's death. *In re Wells*, 142 Iowa 255, 120 N. W. 713.

### **"All Property within the Jurisdiction." — Situs of Tangible Personal Property.**

Under the Iowa code in force in 1901, section 1467, where a resident of Iowa died owning cattle outside the state, the estate was not required to pay an inheritance tax on these cattle on the ground that tangible property like this may have a situs other than that of the domicile of the owner, and that there may be a distinction between tangible property such as horses and cattle and intangible property such as debts and choses in action. Cattle belonging to the deceased were not within the jurisdiction of the state unless it be constructively.

The fact that the cattle were sold about four months after the death of testator and the proceeds brought within the state later does not affect the matter. The death of the testator seems to fix the time when the property became subject to the tax, and at the death of the testator the cattle were not in the state. When this property passed to the collateral heirs it was clearly not subject to the tax. If the property had been distributed in the state of Missouri there would be no doubt that it would not have been subject to the tax imposed by our law, and the bringing of the proceeds into this state for the purpose of distribution would not make it subject to the tax. *Weaver v. State*, 110 Iowa 328, 81 N. W. 603. (The statute has been amended, however, since this decision to include such property.)

**"All Property within the Jurisdiction." — Situs of Intangible Personal Property.**

The court does not determine whether a non-resident creditor by placing intangible property in the hands of an agent within this state for management and control for business purposes may fix its situs for taxation.

Money deposited in banks in Iowa by a non-resident who took out a certificate of deposit therefor which she owned and had in possession in New Hampshire at the time of her decease, is not subject to the Iowa collateral inheritance tax.

Intangible choses in action held by a non-resident in her possession at the date of her death in New Hampshire where she resided are not taxable under the Iowa collateral inheritance tax where the debtor was a resident of Iowa. The court holds that the situs of the choses in action attaches to the owner, that any debt has its situs at the residence of the creditor. The court remarks that *Bridges v. Griffin*, 33 Ga. 113, is the only case it has been able to find which holds that the residence of the debtor fixes the situs of the property. See, however, *In re Joyslin*, 76 Vt. 88, 56 A. 281.

*Gilbertson v. Oliver*, 129 Iowa 568, 105 N. W. 1002, 4 L. R. A. N. S. 953, is said in *In re Culver*, 145 Iowa 1, 123 N. W. 743, not to apply to bank or other corporation stock, as the inheritance tax on such shares was paid without a contest and the entire discussion related to evidences of debt and securities therefor other than corporate shares of stock.

Under Iowa code, section 1467, the inheritance tax is applicable to the estate of a non-resident owner of stock in a domestic



corporation. A share of stock in a corporation may be defined as a right which its owner has in the management, profits and ultimate assets of the corporation. The shares of stock represented an interest in the earnings of the property of the corporation, and a certificate is not stock itself, but only a convenient representation of it, though one may be a stockholder without having a certificate issued to him. The court finds that the decedent owned an "interest" in the property of the bank within the meaning of the inheritance statute and that such interest is property within the jurisdiction of the state. *In re Culver*, 145 Iowa 1, 123 N. W. 743, citing *inter alia*, *Faxton v. McCosh*, 12 Iowa 527.

**"Deed."**

Where the testator in 1900 joined with his wife in making a deed of real estate to the son of his adopted child in consideration of support for himself and his wife for the rest of their lives, and the son carried out the contract faithfully, and the testator died in 1906 having by his will provided that certain expenses should be paid out of the personal estate and not by the son, as the contract required, the court holds that the property so transferred is not subject to the inheritance tax. The son took immediate possession of the land and continued to occupy the same down to the date of trial. The son paid the taxes on the land, had full possession and the testator never claimed ownership after the conveyance, in fact expressly disclaimed any interest in the land, and many times asserted that it belonged exclusively to the son, and it was not suggested that these arrangements were for the purpose of defeating the inheritance tax. *Lamb v. Morrow*, 140 Iowa 89, 117 N. W. 1118, 18 L. R. A. N. S. 226.

**"Deed." — Consideration.**

Where a deed to a son of an adopted daughter is made in consideration of support, reserving a life estate in the grantor, it is proper to show by parol a cancellation of the written contract and a waiver of life estate reserved by the deed. This modification of the obligation of the written contract remaining executory is sufficient consideration for the subsequent oral one. *Lamb v. Morrow*, 140 Iowa 89, 117 N. W. 1118, 18 L. R. A. N. S. 226.

**"Deed . . . to Take Effect . . . After the Death."**

Where a grantor made a deed of an undivided three-fourths interest of land to a brother and two sisters, reserving a one-fourth

interest to himself and delivered it to a third person with instructions to record it and sell the land and divide the proceeds equally among the grantees and himself, and he died before it was recorded or the land sold, the deed is not one taking effect in possession or enjoyment after the death of the grantor and is therefore not subject to the inheritance tax. The statute relates plainly to estates granted in deeds or conveyances which in some way make the estate granted dependent on the grantor's death; that is, to interests in real estate the possession or enjoyment of which is postponed until after the death of the grantor. The deed in question contained no reference to the death of the grantor, and there was nothing in the conveyance which indicates that it was the grantor's purpose to postpone possession or enjoyment of the interests granted until after his death. *In re Bell*, 146 Iowa 617, 130 N. W. 798.

**"To Any Person." — Effect of Renunciation by Beneficiary. — Evasion of Tax.**

The words in Iowa inheritance tax law, St. 1896, chapter 28, section 1, provide a tax on property which shall pass "to any person." The phrase "to any person" does not necessarily mean one person only, but will include more than one when that is required to give the statute the effect it was intended to have. *McGhee v. State*, 105 Iowa 9, 74 N. W. 695.

No tax can be levied where the collateral beneficiaries under a will renounce all interest in the will and allow the property to be distributed in accordance with the intestate laws. In this case the court on the agreement of all parties revoked the probate of the will, and the estate was distributed as if intestate. This deprived the state of any interest in the estate and relieved the administrators from any obligation to file an inventory, as there were direct heirs who took all the property and the Iowa statute taxed only collaterals. *In re Stone*, 132 Iowa 136, 109 N. W. 455.

**Classes Exempted. — Effect of Death of Devisee.**

Iowa code, section 3281, provides that where a devisee dies before the testator his heirs inherit directly from the testator, and the property does not go to the children of the devisee as though he had survived the testator, and therefore the property passes directly from the decedent to the persons who are determined to be his heirs by the application of these rules construing the statute.

Therefore where a testator dies devising property to his mother, who died before the testator, leaving as heirs a brother and sister of decedent, the succession to these heirs is subject to a collateral inheritance tax. *In re Hulett*, 121 Iowa 423, 96 N. W. 952. The court relies upon *Suydam v. Voorhees*, 58 N. J. Eq. 157, 43 A. 4.

#### **"Adopted Child."**

Where certain adoption proceedings did not comply with the statute, it was urged that the attempt to adopt should be considered equitably as though it had been properly consummated. But the court says that the proceeding for the collection of an inheritance tax is not in equity and that one cannot be made an heir of another by any such considerations. *Lamb v. Morrow*, 140 Iowa 89, 117 N. W. 1118, 18 L. R. A. N. S. 226.

#### **"Charitable, Educational or Religious Societies."**

The exemption clause in the Iowa inheritance statute is to be liberally construed to permit the benevolent purpose of the exemption. *Morrow v. Smith*, 145 Iowa 514, 124 N. W. 316; *In re Spangler* (Iowa 1910), 127 N. W. 625.

A Masonic lodge, a part of the activities of which is engaged in helping the families of members who become in want, is exempt under this statute. *Morrow v. Smith*, 145 Iowa 514, 124 N. W. 316.

The exemption does not apply to a gift or bequest to the Salvation Army or other religious or charitable institutions organized under the corporation laws of another state. *In re Crawford* (Iowa 1910), 126 N. W. 774, citing *In re Prime*, 136 N. Y. 347, 32 N. E. 1091, 18 L. R. A. 713; *Humphreys v. State*, 70 Ohio St. 67, 70 N. E. 957, 65 L. R. A. 776; *People v. Society*, 87 Ill. 246.

The will devised certain land in perpetuity to the dependent poor persons of a certain county, constituting the supervisors of said county trustees to carry a trust into effect. This is clearly a charitable gift and exempt from the inheritance tax even though given to the supervisors of the county. Any society or institution is within the terms of the law charitable when by the law of its organization or by usage it has the duty of providing and administering charitable relief even though it has and exercises other functions of a totally different character.

The county being charged by the statute with the duty of relieving and supporting the poor is to that extent a charitable organization, and a gift made specifically in aid of this feature of its work

is to all reasonable intents and purposes a gift to or for a charitable institution. *In re Spangler* (Iowa 1910), 127 N. W. 625.

Although a gift is made nominally to a charitable corporation organized under the laws of another state, still where the gift is not to or for the corporation itself and where the corporation is given no power or authority to take it out of the jurisdiction of the state or to expend it for any other than the local purposes mentioned in the will, it is exempt from the inheritance tax. The court distinguishes between a gift made generally to or for a charitable society organized in another state and a gift made to aid the work of a strictly legal charity with which the foreign society may be associated. The court regards it as a trust in which the existence of the trustee is not material. *In re Crawford* (Iowa 1910), 126 N. W. 774.

### **"Value."**

The Iowa statute of 1896 uses in sections 1, 3, 4 and 5 for the appraisal of the property the expressions "value," "appraised value" and "actual market value," and the court holds that the statute means in each case a fair market value and not the assessed value of the property fixed for the purpose of ordinary taxation. *McGhee v. State*, 105 Iowa 9, 74 N. W. 695.

### **"Above the Sum of One Thousand Dollars After the Payment of All Debts."**

This statute means that the thousand dollars exemption applies to the property of the estate and not to the share of each heir. The court remarks on the expression "after the payment of all debts," and says that this must mean the debts of the estate, as the officer charged with the duties of settling the estate cannot have official knowledge of the debts of the heirs or devisees and there does not appear to be any good reason for granting such a person because he is in debt an exemption at the expense of the state which is not granted to a person of the same class who is not in debt. The exemption of one thousand dollars does not invalidate the tax. *McGhee v. State*, 105 Iowa 9, 74 N. W. 695. The court declines to follow *In re Howe*, 112 N. Y. 100, 19 N. E. 513.

The effect of the law is that all estates of less value than one thousand dollars shall be exempt, and when exceeding in value such sum all property passing to the collateral heirs is subject

to the inheritance tax. The court relies on the words of sections 1470, 1471, which provide for any estate exceeding one thousand dollars and on the fact that many years will usually intervene between the collection of the tax on the remainder and other portions of the estate and it would be utterly impossible to apportion one thousand dollars of the exemption among the collateral heirs equitably. *Heriott v. Bacon*, 110 Iowa 342, 81 N. W. 701. The court distinguishes *State v. Hamlin*, 86 Me. 495, 30 A. 76, 41 Am. St. Rep. 569 n., 25 L. R. A. 632, as in that state other provisions of the statute unequivocally indicate the opposite result.

The Iowa code, sections 1467, 1470 and 1471, must be read together and the court declines to construe section 1467 separately as meaning that the first thousand dollars of the estate are exempt and providing that a collateral inheritance tax must be paid on all property in excess of that thousand dollars. The court affirms *Heriott v. Bacon*, 110 Iowa 342, 81 N. W. 701, and concludes that there is no exemption whatever where the value of an estate after the payment of debts exceeds a thousand dollars. *Gilbertson v. McAuley*, 117 Iowa 522, 91 N. W. 788.

**S. 2. Lien.** It shall be the duty of the executor, administrator or trustee, immediately upon his appointment, to make and file a separate inventory, any will to the contrary notwithstanding, of all the real estate of the decedent liable to such tax, and to cause the lien of the same to be entered upon the lien book in the office of the clerk of the court in each county where each particular part of said real estate is situated, and no conveyance of said estate or interest therein, which is subject to such tax before or after the entering of said lien, shall discharge the estate so conveyed from the operation thereof. (Code, s. 1468.)

**S. 3. Appraisal.** All the real estate of the decedent subject to such tax shall, except as hereinafter provided, be appraised within thirty days next after the appointment of an executor, administrator or trustee, and the tax thereon, calculated upon the appraised value, shall be paid by the person entitled to said estate within fifteen months from the approval by the court of such appraisement; and in default thereof the court shall order the same, or so much thereof as may be necessary to pay such tax, to be sold. (Code, s. 1469.)

These sections as to appraisal were void for lack of notice to parties. See *Ferry v. Campbell*, ante, p. 441. As to the effect of the amending act of 1898 see *post*, p. 452.

### Second Appraisal.

The district court may order a second appraisement of the property where the state was not a party to the first appraisement

and on showing error in proceedings theretofore had to correct the error by means of a new appraisement. *McGhee v. State*, 105 Iowa 9, 74 N. W. 695.

**"Appraised value"** means fair market value. *McGhee v. State*, 105 Iowa 9, 74 N. W. 695.

S. 4. **Remainders.** When any person whose estate, over and above the amount of his just debts, exceeds the sum of one thousand dollars, shall bequeath or devise any real property to or for the use of the father, mother, husband, wife, lineal descendant, adopted child or lineal descendant of such child, during life or for a term of years, and the remainder to a collateral heir or to a stranger to the blood, the court, upon the determination of such estate for life or years, shall, upon its own motion or upon the application of the treasurer of state, cause such estate to be appraised at its then actual market value, from which shall be deducted the value of any improvements thereon, or betterments thereto, if any, made by the remainderman during the time of the prior estate to be ascertained and determined by the appraisers, and the tax on the remainder shall be paid by such remainderman within sixty days from the approval by the court of the report of the appraisers. If such tax is not paid within said time the court shall then order said real estate, or so much thereof as shall be necessary to pay such tax to be sold.

**"Actual market value"** means fair market value and not the value assessed for annual tax. *McGhee v. State*, 105 Iowa 9, 74 N. W. 695.

Sections 5 to 15 provide for appraisal and collection of taxes.

## THE AMENDMENTS OF 1898.

Iowa St. 1898, c. 37, approved April 7, 1898, s. 1, provided additional regulations as to the appraisal of property. The statute of 1896 was amended as follows:—

Code S. 1476. **Method of appraisement.—Notice.—Hearing.—Appeal.** All appraisements of real estate subject to such tax shall be made and filed in the manner provided for appraisement of personal property. When such real estate is situated in another county, the same appraisers may serve, or others may be appointed. It shall be the duty of all appraisers appointed under the provisions of this chapter to forthwith give notice to the treasurer of state and other persons known to be interested in the property to be appraised, of the time and place at which they will appraise such property, which time shall not be less than ten days from the date of such notice. The notice shall be served in the same manner as is prescribed for the commencement of civil actions unless a different one is ordered by the court or judge, and the notice with the proof of

service thereof, shall be returned to the court, with the appraisalment. The treasurer of state, or any person interested in the estate appraised, may file exceptions to the appraisalment, on the hearing of which, as an action in equity, either party may produce evidence competent or material to the matters therein involved. If, upon such hearing, the court finds the amount at which the property is appraised is its value on the market in the ordinary course of trade, and the appraisalment was fairly and in good faith made, it shall approve such appraisalment; but if it finds that the appraisalment was made at a greater or less sum than the value of the property in the ordinary course of trade, or that the same was not fairly or in good faith made, it shall set aside the appraisalment, appoint new appraisers and so proceed until a fair and good appraisalment of the property is made at its value in the market in the ordinary course of trade. The treasurer of state, or any one interested in the property appraised may appeal to the supreme court from the order of the district court approving or setting aside any appraisalment to which exceptions have been filed. Notice of appeal shall be served within thirty days from the date of the order appealed from, and the appeal shall be perfected in the time now provided for appeals in equitable actions. In case of appeal the appellant, if he is not the treasurer of state, shall give bond to be approved by the clerk of the court, to pay the tax, which bond shall provide that the said appellant and sureties shall pay the tax for which the property may be liable, with costs of the appeal. (26 G. A., c. 28, s. 10.) (27 G. A., c. 37, s. 1.)

[See *Montgomery v. Gilbertson*, and *Ferry v. Campbell*, reported *ante*, pp. 441, 442.]

S. 2 covers the payment of taxes on real estate.

S. 3 provides for the payment of taxes on corporate stock.

S. 4 gives a lien on corporate securities and assets.

S. 5 requires the collection of a list of heirs.

S. 6 provides for the framing of rules and regulations relating to assessment and collection of the collateral inheritance tax.

S. 7 covers the duty and compensation of the county attorney and collection of the tax.

This statute was passed in part for the purpose of making the act valid by providing adequate notice to parties of the assessment of the tax. See *Montgomery v. Gilbertson*, reported *ante*, p. 442, and *Ferry v. Campbell*, reported *ante*, p. 441.

S. 8. **In Effect.** This act, being deemed of immediate importance, shall take effect and be in force from and after its publication in the *Iowa State Register* and *Des Moines Leader*, newspapers published at Des Moines, Iowa.

### **Retroactive Effect of the Act of 1898.**

Although a judgment restraining the collection of an inheritance tax on the ground that the Iowa statute 1896, chapter 28, was unconstitutional, has been obtained, still the legislature may thereupon cure the defect in the statute by a retroactive amendment to it, (Iowa statute 1898, chapter 37), and the supreme court may then

reverse the judgment and permit the tax to be collected. A judgment is not of itself a contract in a constitutional sense so that its effect cannot be taken away by legislation. *Ferry v. Campbell*, 110 Iowa 290, 81 N. W. 604, 50 L. R. A. 92.

Where the testator died after the enactment of Iowa statute 1896, chapter 28, and before the amendment enacted by Iowa statute 1898, chapter 37, and where the first statute was void for lack of notice on appraisal the court holds that the amendment although retroactive in form cannot authorize a legal inheritance tax on real estate of the testator. The court distinguishes the case of *Ferry v. Campbell*, 110 Iowa 290, 81 N. W. 604, 50 L. R. A. 92, as that case applied solely to personal property. The court shows that title to personal property does not pass to the legatees or distributees until actual distribution, while real estate passes at once on the death of testator without any further action by the administrator. The amending statute is not in the nature of a curative act but purports only to aid in the collection of a valid tax. If then the land is not subject to or liable for the payment of the tax the act has no application. At the death of the testator there was no remedy by which a tax could be fixed or enforced. A tax that cannot be enforced by any remedy is no tax at all. If a tax on succession, the amount of which cannot be ascertained, may relate back one year, it may stretch back over a period of twenty or any number of years and the citizens never know with any degree of certainty what burdens are to be imposed. The court distinguishes the case of *Gelsthorpe v. Furnell*, 20 Mont. 299, 51 P. 267, 39 L. R. A. 170, as it appears from that case that real estate in Montana is subject to the control of the court and held in possession by the administrator until the order of distribution. *Heriott v. Potter*, 115 Iowa 648, 89 N. W. 91.

**Iowa St. 1900, c. 51.** Approved April 7, 1900.

**S. 1. Debts deducted.** The term "debts" in the eleventh line of section fourteen hundred and sixty-seven (1467) of the code shall include, in addition to debts owing by decedent at the time of his death, the local or state taxes due from the estate prior to his death, and a reasonable sum for funeral expenses, court costs, including the costs of appraisement made for the purpose of assessing the collateral inheritance tax, the statutory fees of executors, administrators, or trustees, and no other sum; but said debts shall not be deducted unless the same are approved and allowed, within fifteen months from the death of decedent, as established claims against the estate, unless otherwise ordered by the judge or court of the proper county. (Code, s. 1467a.)



**Purpose of Section.**

The purpose of the Iowa code, section 1467a, is that an estate whose value is near the dividing line shall not be carried into the exempt class by extraordinary charges under the guise of funeral expenses or by presentation of stale or fictitious claims which are not allowed within fifteen months. *Morrow v. Durant*, 140 Iowa 437, 118 N. W. 781, 23 L. R. A. (N. S.) 474 n.

**When State can Invoke this Section.**

Where the residuary legatees concede the propriety and reasonableness of the fund for erecting a tomb to the testator the state in the absence of fraud or collusion cannot interfere nor has it a right to try the question of the reasonableness of an expense under section 1467a except for the purposes of determining the classification of an estate as exempt or non-exempt from taxation. Neither section 1467 relating to a tax on estates whose value is above one thousand dollars after payment of all debts, nor 1467a is applicable to a case where it is admitted that the estate is of a value above the sum of one thousand dollars after the payment of debts. *Morrow v. Durant*, 140 Iowa 437, 118 N. W. 781, 23 L. R. A. (N. S.) 474 n.

**"Funeral Expenses."**

The question whether the amount reserved by a will for the erection of a tomb is "reasonable" is a question of mixed law and fact on which it is very important that the will of the decedent expressly provided for this expenditure and this provision of the will raises the presumption of reasonableness. The court refuses to consider from the lack of evidence the question whether a provision of two thousand dollars for a tomb is reasonable, especially where the residuary legatees concede its reasonableness. *Morrow v. Durant*, 140 Iowa 437, 118 N. W. 781, 23 L. R. A. (N. S.) 474 n.

**Payments to Compromise Contest.**

The testator made two wills, and a legatee under the first will who was omitted from the second contested the second will. The parties then made a compromise by which the contestant was paid a sum of money in settlement of his claim. The court holds that payments in adjustment of conflicting claims to an estate by those asserting title thereto cannot be construed as debts nor treated as expenses in its settlement. The entire estate, including the sums

to be paid the contestant, passed to the legatees of the deceased upon his death, and payments in settlement are in law by the legatees rather than an expense of the estate. *In re Wells*, 142 Iowa 255, 120 N. W. 713. The court relies on *In re Westburn*, 152 N. Y. 93, 46 N. E. 315. The court distinguishes the case of *In re Hawley*, 214 Pa. St. 525, as in that case the daughters who took the property under the will and paid over in compromise were direct descendants and therefore no tax was due, while in the Wells case the estate was acquired by the heirs, and as they were collaterals was subject to the tax, and in paying it out they were handed their own property. The court also distinguishes *In re Kerr*, 159 Pa. St. 512, 28 A. 354, as there the compromise was of a contest over the testator's title.

Where under an agreement of compromise executed by the parties, it was agreed that contestants were to "pay C. the legacy given her under said [second] will," the court was evenly divided on the question whether this payment was subject to the inheritance tax. If the payment was made under the will it was subject to the tax and if the payment went under the agreement it was not. *In re Wells*, 142 Iowa 255, 120 N. W. 713.

**S. 2. Property subject to tax.** Except as to property passing to the persons, corporations and societies exempted by section fourteen hundred and sixty-seven (1467) of the code from the collateral inheritance tax, and real property located outside of the state passing in fee from the decedent owner, the tax imposed under chapter four (4) of title seven (7) of the code shall hereafter be assessed against, and be collected from, property of every kind, which, at the death of the decedent owner, is subject to, or thereafter, for the purpose of distribution, is brought into this state and becomes subject to the jurisdiction of the courts of this state for distribution purposes, or which was owned by any decedent domiciled within the state at the time of the death of such decedents even though the property of said decedent so domiciled was situated outside of the state. (Code, s. 1467b.)

This section alters the law as laid down in *In re Weaver*, reported *ante*, p. 444.

### **"Property of Every Kind."**

These words do not render property reserved by the will for a tomb subject to tax. The court remarks that that interpretation would make the statute unconstitutional as it is only upheld on the theory that it is not a tax upon the property itself but on the right to succession to property. *Morrow v. Durant*, 140 Iowa 437, 118 N. W. 781, 23 L. R. A. (N. S.) 474 n.

**Effect of Collateral Adjudication of Title.**

A decree of a district court passing upon a title to land involved in an agreement of compromise of a will is of no effect on the question of inheritance tax, as the state treasurer was not a party to that suit and was in no way interested therein. *Lacy v. State Treasurer* (Iowa 1909), 121 N.W. 179. (McClain, J., dissenting.)

**S. 3. Foreign estates and deduction of debts.** Whenever any property belonging to a foreign estate, which estate, in whole or in part, is liable to pay a collateral inheritance tax in this state, the said tax shall be assessed upon the market value of said property remaining after the payment of such debts and expenses as are chargeable to the property under the laws of this state; in the event that the executor, administrator or trustee of such foreign estate files with the clerk of the court having ancillary jurisdiction, and with the treasurer of state, duly certified statements exhibiting the true market value of the entire estate of the decedent owner, and the indebtedness for which the said estate has been adjudged liable, which statements shall be duly attested by the judge of the court having original jurisdiction, the beneficiaries of said estate shall then be entitled to have deducted such proportion of the said indebtedness of the decedent from the value of the property as the value of the property within this state bears to the value of the entire estate. (Code, s. 1467d.)

**S. 4. Foreign estates and direct and collateral beneficiaries.** Whenever any property, real or personal, within this state belongs to a foreign estate, and said foreign estate passes in part exempt from the collateral inheritance tax, and in part subject to said collateral inheritance tax, and it is within the authority or discretion of the foreign executor, administrator or trustee administering the estate to dispose of the property, not specifically devised to direct heirs or devisees in the payment of the debts owing by decedent at the time of his death, or in the satisfaction of legacies, devises, or trusts given to direct and collateral legatees or devisees or in payment of the distributive shares of any direct and collateral heirs, then the property within the jurisdiction of this state, belonging to such foreign estate, shall be subject to the collateral inheritance tax imposed by chapter four (4) of title seven (7) of the code, and the tax due thereon shall be assessed as provided in the next preceding section of this act, and with the same proviso respecting the deduction of the proportionate share of the indebtedness, as therein provided. (Code, s. 1467e.)

S. 5 applies to appraisements.

S. 6 allows the court to extend the time for filing the inventory.

S. 7 provides for the valuation of life estates and remainders.

S. 8 provides for compromise.

S. 9 covers reports to be filed with the treasurer.

S. 10 covers the payment of costs, and

S. 11 the fees of county attorneys.

**S. 12. Construction.** In the construction of this statute, the words "collateral heirs" shall be held to mean all persons who are not excepted from the provisions of the collateral inheritance tax by section fourteen hundred and sixty-

seven (1467) of the code, and this act, except section two (2) thereof, shall apply to all pending estates which are not closed, and the property subjected by this act to the said tax is liable to the provisions incorporated in chapter four (4) of title seven (7) of the code, as to the amount and lien thereof, and the manner of enforcement and collection thereof, except as herein specifically provided otherwise.

## **LATER AMENDMENTS.**

### **Appraisers' Fees.**

Iowa St. 1902, c. 55, approved April 4, 1902, covers the compensation of appraisers — provides that it shall be two dollars per day.

### **Refund.**

Iowa St. 1902, c. 63, approved April 10, 1902, provides for the refunding of surplus collateral inheritance tax paid above the amount legally due.

### **Alien Non-Residents.**

Iowa St. 1904, c. 51, approved April 6, 1904, amends section 1467 of the Iowa Code by adding the following: —

"Whenever property, or any interest therein, shall pass to heirs, devisees or other beneficiaries, as contemplated in the foregoing provisions, who are aliens, non-residents of the United States, the same shall be subject to a tax of twenty per centum (20%) of its true value, except where such foreign beneficiaries are brothers or sisters of the decedent owner, when the rate of tax to be assessed and collected therefrom shall be ten per centum (10%) of the value of the property or interest so passing."

### **Stepchild or Descendants.**

**Iowa St. 1906, c. 54.** Approved February 26, 1906.

**S. 1. Exemptions.** Section one thousand four hundred and sixty-seven (1467) of the code is hereby amended by inserting after the word "decedent" at the end of the eighth line of said section, and before the word "or" at the beginning of the ninth line of said section, the following: "stepchild, or the lineal descendant of a stepchild of a decedent."

### **Hospitals, Public Libraries and Art Galleries Exempted.**

**Iowa St. 1906, c. 55.** Approved March 10, 1906.

**S. 1. Exemptions.** That section fourteen hundred and sixty-seven (1467) of the code be amended by inserting a comma after the word "institutions" in the ninth line of said section and the following words, to wit: "including hospitals, public libraries and public art galleries kept open to the free use of the public not less than three days of each week."

**Religious Services or Cemetery Associations.**

Iowa St. 1909, c. 92, approved April 7, 1909, amends section 1467 of the Supplement to the Code of 1907 by inserting after the word "week":—

"Or any bequest, not to exceed \$500.00, to and in favor of any person, having for its purpose the performance of any religious service to be performed for and in behalf of decedent or any person named in his or her last will and testament, or any cemetery associations;".

**THE PRESENT ACT.**

Iowa St. 1911, c. 68.

AN ACT RELATING TO THE ASSESSMENT AND COLLECTION OF A TAX UPON COLLATERAL ESTATES, annuities, legacies, bequests, gifts, transfers and inheritances, and repealing the law as it appears in chapter four (4), of title seven (7), of the Supplement to the Code, 1907, and chapter ninety-two (92) of the Acts of the Thirty-Third (33) General Assembly and to enact a substitute therefor. (In effect July 4, 1911.)

**Transfers Taxable. — Rate. — Lien. — Liabilities.**

S. 1. The estates of all deceased persons, whether they be inhabitants of this state or not, and whether such estate consists of real, personal or mixed property, tangible or intangible, and any interest in, or income from any such estate or property, which property is, at the death of the decedent owner, within this state or is subject to, or thereafter, for the purpose of distribution, is brought within this state and becomes subject to the jurisdiction of the courts of this state, or the property of any decedent, domiciled within this state at the time of the death of such decedent, even though the property of such decedent so domiciled was situated outside of the state, except real estate located outside of the state passing in fee from the decedent owner, which shall pass by will or by the statutes of inheritance of this or any other state or country, or by deed, grant, sale, gift or transfer made in contemplation of the death of the donor, or made or intended to take effect in possession or enjoyment after the death of the grantor or donor, to any person, or for any use in trust or otherwise, other than to or for the use of persons, or uses exempt by this act shall be subject to a tax of five (5) per centum, provided, however, that when property or any interest therein shall pass to heirs, devisees or other beneficiaries subject to the tax imposed by this act who are aliens, non-residents of the United States, the same shall be subject to a tax of twenty (20) per centum of its true value except when such foreign beneficiaries are brothers or sisters of the decedent owner, when the rate of tax to be assessed and collected therefrom shall be ten (10) per centum of the value of the property or interest so passing. Any person beneficially entitled to any property or interest therein because of any such gift, legacy, devise, annuity, transfer or inheritance, and all administrators, executors, referees and trustees, and any such grantee under a conveyance, and any such donee under a gift, and any such legatee, annuitant, devisee, heir or beneficiary, shall be respectively liable for all such taxes to be paid by them respectively. The tax aforesaid shall be for the use of the state, shall accrue at the death of the decedent owner, and shall be paid to the treasurer of state within eighteen (18) months thereafter, except when otherwise provided in this act, and shall be and remain a legal charge against and a lien

upon such estate, and any and all of the property thereof from the death of the decedent owner until paid.

[See notes to the Statute of 1896, *ante*, p. 441 *et seq.*]

### **Exemptions.**

S. 2. The tax imposed by this act shall not be collected,

1st — When the entire estate of the decedent does not exceed the sum of one thousand dollars (\$1,000.00) after deducting the debts as defined in this act.

2d — When the property passes to the husband or wife.

3d — When the property passes to the father, mother, lineal descendant, adopted child or the lineal descendant of an adopted child of decedent.

4th — When the property passes to educational and religious societies or institutions, public libraries and public art galleries within this state and open to the free use of the public.

5th — Property passing to or for hospitals within this state open to the public and not operated for gain, or to societies within this state organized for purposes of public charity, including cemetery associations, but not including societies maintained by fees, dues or assessments in whose benefits the public may not share.

6th — Bequests for the care and maintenance of the cemetery or burial lot of decedent and his family, and bequests not to exceed five hundred dollars (\$500.00) in any estate, to or for the performance of a religious service or services by some person regularly ordained, authorized or licensed by any religious society to perform such service to be performed for or in behalf of the testator, or some person named in his last will, provided such person so named is, or would be exempt from the tax imposed by this act.

7th — When the property passes to a municipal or political corporation within this state for a purely public purpose.

[See notes to the Act of 1896, *ante*, p. 447.]

### **Debts.**

S. 3. The term "debts" as used in this act shall include, in addition to debts owing by the decedent at the time of his death, the local or state taxes due from the estate in January of the year of his death, a reasonable sum for funeral expenses, court costs, the cost of appraisement made for the purpose of assessing the collateral inheritance tax, the statutory fees of executors, administrators or trustees estimated upon the appraised value of the property, the amount paid by the executor or administrator for a bond, the attorney fee in a reasonable amount to be approved by the court, for the ordinary probate proceedings in said estate, and no other sum; but said debts shall not be deducted unless the same are approved and allowed by the court within eighteen (18) months from the death of the decedent, as established claims against the estate, unless otherwise ordered by the judge or court of the proper county.

[See notes to the Act of 1896, *ante*, p. 449.]

### **Petition by State Treasurer for Administration. — Non-Residents.**

S. 4. If, upon the death of any person leaving an estate that may be liable to a tax under the provisions of this act, a will disposing of such estate is not offered for probate, or an application for administration made within four months from the time of such decease, the treasurer of state may, at any time thereafter,

make application to the proper court, setting forth such fact and praying that an administrator may be appointed, and thereupon said court shall appoint an administrator to administer upon such estate. When the heirs or persons entitled to inherit the property of an estate subject to the tax hereby imposed, desire to avoid the appointment of an administrator as provided in this section, they or one of them shall, before the expiration of four months from the death of the decedent, file under oath the inventories and reports and perform all the duties required by this act, of administrators, including the filing of the lien; proceedings for the collection of the tax when no administrator is appointed, shall conform as nearly as may be to the provisions of this act in other cases.

A non-resident of this state shall not be appointed as executor, administrator or trustee of any estate that may be subject to the tax imposed by this act, unless such non-resident first file a bond conditioned upon the payment of all tax, interest and costs for which the estate may be liable, such bond to be signed by not less than two resident freeholders or by an approved surety company and in an amount not less than twenty-five per cent (25 per cent) of the total value of the estate, or of the property within this state if the estate is a foreign estate.

#### **Appraisers.**

S. 5. In each county, the court shall annually at the first time of the court therein appoint three competent residents and freeholders of said county, to act as appraisers of all property within its jurisdiction which is charged or sought to be charged with the collateral inheritance tax. Said appraisers shall serve for one year, and until their successors are appointed and qualified. They shall each take an oath to faithfully and impartially perform the duties of the office, but shall not be required to give bond. They shall be subject to removal at any time at the discretion of the court, and the court or judge thereof in vacation, may also in its discretion, either before or after the appointment of the regular appraisers, appoint other appraisers to act in any given case. Vacancies occurring otherwise than by expiration of term, shall be filled by the appointment of the court or by a judge in vacation. No person interested in any manner in the estate to be appraised may serve as an appraiser of such estate

#### **Commission to Appraisers.**

S. 6. Whenever it appears that an estate or any property or interest therein is or may be subject to the tax imposed by this act, the clerk shall issue a commission to the appraisers, who shall fix a time and place for appraisement, except that if the only interest that is subject to such tax is a remainder or deferred interest upon which the tax is not payable until the determination of a prior estate or interest for life or term of years, he shall not issue such commission until the determination of such prior estate, except at the request of parties in interest who desire to remove the lien thereon.

#### **Notice by Appraisers.**

S. 7. It shall be the duty of all appraisers appointed under the provisions of this act, upon receiving a commission as herein provided, to forthwith give notice to the treasurer of state and other persons known to be interested in the property to be appraised, of the time and place at which they will appraise such property, which time shall not be less than ten days from the date of such notice. The notice shall be served in the same manner as is prescribed for the commencement

of civil actions, and if not practicable to serve the notice provided for by statute, they shall apply to the court or a judge thereof in vacation for an order as to notice and upon service of such notice and the making of such appraisal, the said notice, return thereon and appraisal shall be filed with the clerk, and a copy of such appraisal shall at once be filed by the clerk with the treasurer of state. When property is located in more than one county, the appraisers of the county in which the estate is being administered may appraise the whole estate, or those of the several counties may serve for the property within their respective counties or other appraisers be appointed as the district court if in session, or judge thereof in vacation may direct.

[See notes to the Act of 1896 and 1898, *ante*, pp. 441, 450.]

#### **Objections and Appeal from Appraisal.**

S. 8. The treasurer of state or any person interested in the estate or property appraised, may, within twenty (20) days thereafter, file objections to said appraisal and give notice thereof as in beginning civil actions, on the hearing of which as an action in equity either party may produce evidence competent or material to the matters therein involved. If upon such hearing the court finds the amount at which the property is appraised is its value on the market in the ordinary course of trade, and the appraisal was fairly and in good faith made, it shall approve such appraisal; but if it finds that the appraisal was made at a greater or less sum than the value of the property in the ordinary course of trade, or that the same was not fairly or in good faith made, it shall set aside the appraisal, appoint new appraisers and so proceed until a fair and good appraisal of the property is made at its value in the market in the ordinary course of trade. The treasurer of state or anyone interested in the property appraised, may appeal to the supreme court from the order of the district court approving or setting aside any appraisal to which exceptions have been filed. Notice of appeal shall be served within sixty days from the date of the order appealed from, and the appeal shall be perfected in the time now provided for appeals in equitable actions. In case of appeal the appellant, if he is not the treasurer of state, shall give bond to be approved by the clerk of the court, which bond shall provide that the said appellant and sureties shall pay the tax for which the property may be liable with cost of appeal. If upon the hearing of objections to the appraisal, the court finds that the property is not subject to the tax, the court shall upon expiration of time for appeal, when no appeal has been taken, order the clerk to enter upon the lien book a cancellation of any claim or lien for taxes. If at the end of twenty (20) days from the filing of the appraisal with the clerk, no objections are filed, the appraisal shall stand approved.

#### **Appraisal.**

S. 9. Within ninety (90) days after the transfer of any property that may be liable for a tax under the provision of this act, except as herein otherwise provided, the clerk of the proper county upon his own motion or upon the application of the treasurer of state, county attorney, or person interested in the property, shall cause the property to be appraised as provided herein. If there be an estate or property subject to said tax wherein the records in the clerk's office do not disclose that there may be a tax due under the provisions of this act, the person or persons interested in the property shall report the matter to the clerk with an application that the property be appraised. The appraised value of the property shall in all cases



be its market value in the ordinary course of trade, and in domestic estates the tax shall be calculated thereon after deducting the debts as defined herein; provided, however, that the debt of a domestic estate owing for or secured by property outside of the state, shall not be deducted before estimating the tax, except when the property for which the debt is owing or by which it is secured is subject to the tax imposed by this act, or when the foreign debt exceeds the value of the property securing it or for which it was contracted, then the excess may be deducted provided that satisfactory proof of the value of the foreign property and the amount of such debt is furnished to the treasurer of state.

**Appraisal, continued.**

S. 10. All estates subject in whole or in part to the tax imposed by this act shall be appraised for the purpose of computing said tax by the regular collateral inheritance tax appraisers; provided, that estates liable for the payment of the inheritance tax upon specific legacies, annuities, bequests of money or other property, the value of which may be determined without appraisement, and estates which consist of money, book accounts, bank deposits, notes, mortgages and bonds, need not be appraised by the collateral inheritance tax appraisers if the administrator, executor or trustee or the persons entitled to or claiming such property are willing to charge themselves with the full face value of such bequests or property, together with the interest, earnings, or undivided profits which may be due on said properties, at the time of death of the testator or intestate, as the basis for the assessment of said tax, but in all cases the relief from appraisement for the collateral inheritance tax is dependent upon the consent of the treasurer of state, and the subsequent approval thereof by the court or judge thereof in vacation. In the event that the estate has been duly appraised under the ordinary statutes of inheritance or the property has been sold and such appraisement or selling price is accepted by the treasurer of state as satisfactory for collateral inheritance tax purposes, the court or judge thereof in vacation may, upon proper application, relieve the estate from the appraisement by the collateral inheritance tax appraisers; but in order to obtain such relief, the administrator, executor, trustee or other party interested must file an application for relief with the consent of the treasurer of state thereto in the office of the clerk of the court before said clerk issues a commission to the collateral inheritance tax appraisers. The court or judge thereof in vacation may, upon application of the representatives of the estate or parties interested, relieve the estate of the appraisement for collateral tax purposes if it be shown to said court that the market value of the entire estate will not exceed one thousand dollars; provided, that prior to the application to said court or judge the written consent of the treasurer of state to such relief is procured. In all cases where an estate is relieved from an appraisement for collateral inheritance tax purposes, the order granting relief shall be recorded in the clerk's office, and the fact of such relief and reasons therefor shall be duly noted in the decree or order of final settlement made by the court.

**Appraisal. — Remainders in Real Estate.**

S. 11. When any person, whose estate over and above the amount of his debts, as defined in this act, exceeds the sum of one thousand dollars, shall bequeath or devise any real property to or for the use of persons exempt from the tax imposed by this act, during life or for a term of years, and the remainder to a collateral heir, said property upon the determination of such estate for life or

years, shall be appraised at its then actual market value from which shall be deducted the value of any improvements thereon, or betterments thereto, if any, made by the remainderman during the time of the prior estate, to be ascertained and determined by the appraisers and the tax on the remainder shall be paid by such remainderman as provided in the next succeeding section.

**Same.**

S. 12. Whenever any real property of a decedent shall be subject to such tax and there be an estate or interest for life or term of years given to a party other than those especially exempt by this act, the clerk shall cause such property to be appraised at the actual market value thereof, as is provided in ordinary cases, and the party entitled to such estate or interest shall within one (1) year from the death of decedent owner pay such tax, and in default thereof the court shall order such interest in said estate, or so much thereof as shall be necessary to pay such tax and interest, to be sold. Upon the determination of any prior estate or interest, when the remainder or deferred estate or interest or any part thereof is subject to such tax and the tax upon such remainder or deferred interest has not been paid, the person or persons entitled to such remainder or deferred interest shall immediately report to the clerk of the proper court the fact of the determination of the prior estate, and upon receipt of such report, or upon information from any source, of the determination of any such prior estate when the remainder interest has not been appraised for the purpose of assessing such tax, the clerk shall forthwith issue a commission to the collateral inheritance tax appraisers, who shall immediately proceed to appraise the property as provided in like cases in the next preceding section, and the tax upon such remainder interest shall be paid by the remainderman within one (1) year next after the determination of the prior estate. If such tax is not paid within said time the court shall then order said property, or so much thereof as may be necessary to pay such tax, and interest to be sold.

**Appraisal. — Interests in Personal Property.**

S. 13. Whenever any personal property shall be subject to the tax imposed by this act and there be an estate or interest for life or term of years given to one or more persons and remainder or deferred estate to others, the clerk shall cause the property so devised or conveyed to be appraised as provided herein in ordinary estates and the value of the several estates or interests so devised or conveyed shall be determined as provided in section seventeen (17) of this act, and the tax upon such estates or interests as are liable for the tax imposed by this act shall be paid to the treasurer of state from the property appraised or by the persons entitled to such estate or interest within eighteen (18) months from the death of the testator, grantor, or donor, provided, however, that payment of the tax upon any deferred estate or remainder interest may be deferred until the determination of the prior estate by the giving of a good and sufficient bond as provided in the next succeeding section.

**Remainder Interests. — Bond. — When Tax Payable.**

S. 14. When in case of deferred estates or remainder interests in personal property or in the proceeds of any real estate that may be sold during the time of a life, term or prior estate, the persons interested who may desire to defer the payment of the tax until the determination of the prior estate, shall file with the

clerk of the proper district court a bond as provided herein in other cases, such bond to be renewed every two years until the tax upon such deferred estate is paid. If at the end of any two year period the bond is not promptly renewed as herein provided and the tax has not been paid, the bond shall be declared forfeited.

When the estate of a decedent consists in part of real and in part of personal property, and there be an estate for life or for a term of years to one or more persons and a deferred or remainder estate to others, and such deferred or remainder estate is in whole or in part subject to the tax imposed by this act, if the deferred or remainder estates or interests are so disposed that good and sufficient security for the payment of the tax for which such deferred or remainder estates may be liable can be had because of the lien imposed by this act upon the real property of such estate, then payment of the tax upon such deferred or remainder estates may be postponed until the determination of the prior estate without giving bond as herein required to secure payment of such tax, and the tax shall remain a lien upon such real estate until this tax upon such deferred estate or interest is paid.

#### **Bonds. — Form and Amount.**

S. 15. All bonds required by this act shall be payable to the treasurer of state and shall be conditioned upon the payment of the tax, interest and costs for which the estate may be liable, and for the faithful performance of all the duties hereby imposed upon and required of the person whose acts are by such bond to be guaranteed, and shall be in an amount equal to twice the amount of the tax interest and costs that may be due, but in no case less than five hundred dollars (\$500.00) and must be secured by not less than two resident freeholders or by a fidelity or surety company authorized by the auditor of state to do business in this state.

#### **Removing Property from State without Paying Tax.**

S. 16. It shall be unlawful for any person to remove from this state any property, or the proceeds thereof, that may be subject to the tax imposed by this act, without paying the said tax to the treasurer of state. Any person violating the provisions of this section shall be guilty of a felony and upon conviction shall be fined an amount equal to twice the amount of tax, interest and costs for which the estate may be liable, but in no case less than two hundred dollars (\$200.00) and imprisoned as the court shall direct, until the fine is paid. Provided, however, that the penalty hereby imposed shall not be enforced, if prior to the removal of such property or the proceeds thereof the person desiring to effect such removal files with the clerk a bond conditioned upon the payment of the tax, interest and costs, as is provided in the preceding section hereof.

#### **Annuity Tables Used.**

S. 17. The value of any annuity, deferred estate or interest, or any estate for life or term of years, subject to the collateral inheritance tax, shall be determined for the purpose of computing said tax by the rule of standards of mortality and of value commonly used in actuaries' combined experience tables as now provided by law. The taxable value of annuities, life or term, deferred or future estates, shall be computed at the rate of four (4) per cent per annum of the appraised value of the property in which such estate or interest exists or is founded. When-

ever it is desired to remove the lien of the collateral inheritance tax on remainders, reversions, or deferred estates, parties owning the beneficial interest may pay at any time the said tax on the present worth of such interests determined according to the rules herein fixed.

**Duty of Executors, etc., to Pay Tax. — Power of Sale. — Actions.**

S. 18. It is hereby made the duty of all executors, administrators, trustees or other persons charged with the management or settlement of any estate subject to the tax provided for in this act, to collect and pay to the treasurer of state the amount of tax due from any devisee, grantee, donee, heir or beneficiary of the decedent, except in cases where payment of the tax is deferred until the determination of a prior estate in which cases the treasurer of state shall collect the same. Executors, administrators, trustees or the state treasurer, shall have power to sell so much of the property of the decedent as will enable them to pay said tax, in the same manner as is now provided by law for the sale of such property for the payment of debts of testators or intestates. The treasurer of state may bring or cause to be brought in his name of office, suit, for the collection of said tax, interest and costs, against the executor, administrator or trustee, or against the person entitled to property subject to said tax, or upon any bond given to secure payment thereof, either jointly or severally, and obtaining judgment may cause execution to be issued thereon as is provided by statute in other cases. The proceedings shall conform as nearly as may be to those for the collection of ordinary debt by suit.

If because of necessary litigation or other unavoidable cause of delay enforced payment of the tax hereby imposed, by suit and execution, would result in loss or be to the detriment of the best interests of the estate, the court may extend the time for the payment of the tax. Such extensions of time shall not be granted except in cases where security is given for payment of the tax, interest and costs.

**Tax to be Deducted by Executors, etc.**

S. 19. Every executor, administrator, referee or trustee having in charge or trust any property of an estate subject to said tax, and which is made payable by him, shall deduct the tax therefrom or shall collect the tax thereon from the legatee or person entitled to said property and pay the same to the treasurer of state, and he shall not deliver any specific legacy or property subject to said tax to any person until he has collected the tax thereon.

**Probate Accounts not Settled till Tax Paid.**

S. 20. No final settlement of the account of any executor, administrator or trustee shall be accepted or allowed unless it shall show, and the court shall find, that all taxes imposed by the provisions of this act upon any property or interest therein, that is hereby made payable by such executors, administrators or trustees, and to be settled by said account, shall have been paid, and the receipt of the treasurer of state for such tax shall be the proper voucher for such payment. Any order contravening the provision of this section shall be void. Upon the filing of such receipt showing payment of the tax, the clerk shall record the same upon the collateral inheritance tax lien book in his office.

**Jurisdiction of District Court.**

S. 21. The district court in the county in which some part of the property is situated, of the decedent who was not a resident, or such court in the county of which the deceased was a resident at the time of his death or where such estate is administered, shall have jurisdiction to hear and determine all questions regularly brought before it in relation to said tax that may arise affecting any devise, legacy, annuity, transfer, grant, gift or inheritance, subject to appeal as in other cases, and the treasurer of state shall in his name of office, with all the rights and privileges of a party in interest, represent the state in any such proceedings.

**Bequests to Executors, etc.**

S. 22. Whenever a decedent appoints one or more executors or trustees and in lieu of their allowance or commission, makes a bequest or devise of property to them which would otherwise be liable to said tax, or appoints them his residuary legatees, and said bequests, devises or residuary legacies exceed the statutory fees as compensation for their services, such excess shall be liable to such tax.

**Legacies Charged on Real Estate.**

S. 23. Whenever any legacies subject to said tax are charged upon or payable out of any real estate, the heir or devisee, before paying the same, shall deduct said tax therefrom and pay it to the executor, administrator, trustee or treasurer of state, and the same shall remain a charge against and be a lien upon said real estate until it is paid; and payment thereof shall be enforced by the executor, administrator, trustee or treasurer of state in his name of office as herein provided.

**Payment. — Interest.**

S. 24. All taxes imposed by this act shall be payable to the treasurer of state, and except when otherwise provided in this act, shall be paid within eighteen (18) months from the death of the testator or intestate. All taxes not paid within the time prescribed in this act shall draw interest at the rate of eight per centum per annum thereafter until paid.

**Information to be Furnished.**

S. 25. Before issuing his receipt for the tax, the treasurer of state may demand from administrators, executors, trustees or beneficiaries such information as may be necessary to verify the correctness of the amount of the tax and interest, and when such demand is made they shall send to said treasurer certified copies of wills, deeds, or other papers, or of such parts of their reports as he may demand, and upon the refusal or neglect of said parties to comply with the demand of the treasurer of state, it is the duty of the clerk of the court to comply with such demand, and the expenses of making such copies and transcripts shall be charged against the estate, as are other costs in probate, or the tax may be assessed without deducting the debts for which the estate may be liable.

**Records.**

S. 26. The clerk of the district court in and for each county shall provide and keep a suitable book, substantially bound and suitably ruled, to be known as the collateral inheritance tax and lien book, in which shall be kept a full and accurate

record of all proceedings in cases where property is charged or sought to be charged with the payment of a collateral inheritance tax under the laws of this state, to be printed and ruled so as to show upon one page:—

- (1) The name, place of residence, and date of death of the decedent.
- (2) Whether the decedent died testate, or intestate, and if testate, the record and page where the will was probated and recorded.
- (3) The name and post-office address of the executor, administrator, trustee or grantee, with date of appointment or transfer.
- (4) The names, post-office address and relationship, if known, of all the heirs, devisees and grantees.
- (5) The appraised valuation of the personal property.
- (6) The amount of inheritance tax due upon said personal property.
- (7) A record of payment with amount and date.
- (8) Date of filing objections and names of objectors.
- (9) Blank for index and reference to all proceedings and for memorandum entries of the court or judge in relation thereto.

Upon the opposite page of such record shall be printed:

- (1) "Real estate derived from (naming decedent) which is subject to the lien prescribed by the statute for collateral inheritance tax."
- (2) A full and accurate description of such real estate, by forty-acre or fractional tracts, or by lots, or other complete individual description.
- (3) The appraised valuation as reported by the appraisers, with a reference to the record of their report, as to each piece of such real estate.
- (4) The amount of the inheritance tax due upon each such piece.
- (5) A record of payments, with dates and amounts.

#### **Report by Executors, etc.**

S. 27. Upon the appointment and qualification of such executor, administrator and testamentary trustee, the clerk issuing the letters shall at the same time deliver to him a blank form upon which he shall be required to make detailed report of the following facts:—

- (1) Name and last residence of decedent.
- (2) Date of death.
- (3) Whether or not he left a will.
- (4) Name and post-office of executor, administrator or trustee.
- (5) Name and post-office of surviving wife or husband if any.
- (6) If testate, name and post-office of each beneficiary under will.
- (7) Relationship of each beneficiary to the testator.
- (8) If intestate, name and postoffice of each heir at law.
- (9) Relationship of each heir at law to decedent.
- (10) Inventory of all real estate of the decedent giving amount and description of each tract.
- (11) Whether the property passes in possession and enjoyment in fee for life or for a term of years.

Within thirty days after his qualification, each executor, administrator and testamentary trustee shall make and return to the clerk, under oath, a full and detailed report as indicated in the preceding paragraph, any will to the contrary notwithstanding, and upon his failure to do so, the clerk shall forthwith report

his delinquency to the district court if in session, or to a judge of said court if in vacation, for such order as may be necessary to enforce an observance of this section. If it appears from the inventory or report so filed that the real estate or any part of it is subject to an inheritance tax it shall be the duty of the executor or administrator or of any person interested in the property if there be no administration, to cause the lien of the same to be entered upon the lien book in the office of the clerk of the court in each county where each particular tract of said real estate is situated, and when said real estate or any interest therein, is subject to such tax, no conveyance either before or after the entering of said lien, shall discharge the real estate so conveyed from said lien, no final settlement of the account of any executor, administrator or trustee shall be accepted or allowed unless a strict compliance with the provisions of this section has been had by such person. Upon the filing of such report, the clerk of the court shall immediately forward a true copy thereof to the treasurer of state.

#### **Extending Time for Inventories.**

S. 28. Whenever, by reason of the complicated nature of an estate, or by reason of the confused condition of the decedent's affairs, it is impracticable for the executor, administrator, trustee or beneficiary of said estate to file with the clerk of the court a full, complete and itemized inventory of the personal assets belonging to the estate, within the time required by statute for filing inventories of the estates, the court may, upon the application of such representatives or parties in interest, extend the time for making the collateral inheritance appraisal for a period not to exceed three months beyond the time fixed by this act.

#### **Report by Person Entitled.**

S. 29. Whenever any property passing under the intestate laws may be subject to the tax imposed by this act, the person or persons entitled to such property shall make or cause to be made to the clerk of the courts of the county wherein such property is located, within ninety (90) days next following the death of such intestate, a report in writing embodying therein substantially the information required by the second preceding section of this act. Failure to furnish such report or to probate the will in a testate estate shall not relieve the estate from the lien created hereby or the persons entitled to the property of such decedent from payment of the tax, interest or other penalties imposed by this act.

#### **Records by Clerk.**

S. 30. The clerk shall enter upon the collateral inheritance tax and lien book, the title of all estates subject to the inheritance tax as shown by the inventories or lists of heirs filed in his office, or as reported to him by the county attorney, treasurer of state, or other person, and shall enter in said book as against each estate or title at the appropriate place, all such information relating to the situation and condition of the estate as he may be able to obtain from the papers filed in his office, or from any other source, as may be necessary to the collection and enforcement of the tax. He shall also immediately index in the book kept in his office for that purpose, all liens entered upon the collateral inheritance tax and lien book. Failure to make such entries as are herein required, shall not operate to relieve the estate from the lien or defeat the collection of the tax.

**Same.**

S. 31. In all cases entered upon the inheritance tax and lien book, the clerk shall make a complete record in the proper probate record, of all the proceedings, orders, reports, inventory, appraisements and all other matters and proceedings therein.

**Reports by Clerks.**

S. 32. It shall be the duty of each clerk of the district court to make examination from time to time of all reports filed with him by administrators, executors and trustees, pursuant to law; also to make examination of all foreign wills offered for probate or recorded within his county, as well as of the record of deeds and conveyances in the recorder's office of said county, and if from such examination or from information or knowledge coming to him from any other source, he finds or believes that any property within his county, or within the jurisdiction of the district court of said county has, since July 4, 1896, passed by will or by the intestate laws of this or any other state, or by deed or other method of conveyance, made in anticipation of or intended to take effect, in possession or in enjoyment after the death of the testator, donor or grantor, to any person other than to or for the use of the persons, societies, or organizations exempt from the tax hereby imposed, he shall make report thereof in writing to the treasurer of state, embodying in such report such information as he may be able to obtain as to the name and residence of decedent, date of death, name and address of administrator, executor or trustee, the description of any property liable to said tax and the county in which it is located and name and relationship of all beneficiaries or heirs. Any citizen of the state having knowledge of property liable to such tax, against which no proceeding for enforcing collection thereof is pending, may report the same to the clerk and it shall be the duty of such officer to investigate the case, and if he has reason to believe the information to be true, he shall forthwith enter the estate and report the same substantially as above indicated. For reporting such estates or property the clerk shall receive a compensation of one dollar (\$1.00) for each one hundred dollars (\$100.00) or fraction thereof of tax paid, but not to exceed the sum of five dollars (\$5.00) in any one estate, the same to be in addition to the compensation now allowed him by law. Except when this information has first been received from another source, the treasurer of state, when he has issued his receipt for the tax in such estate, shall certify to the auditor of state the amount due the clerk for such service and the auditor of state shall issue his warrant on the treasurer of state in favor of said clerk for the sum due as herein provided.

**County Attorney. — Fees.**

S. 33. It shall be the duty of the county attorney of each county, when directed by the treasurer of state, to perform such legal services as shall be necessary in the enforcement of said tax, but such attorney shall have no authority to receipt for or receive any of such tax. He shall advise and assist the clerk and appraisers in the discharge of their duties in collateral inheritance tax matters, and see that the notices required by law are properly made and returned. In each estate where the county attorney has performed such legal services, he shall receive a compensation as follows, viz.: on the first one hundred dollars (\$100.00) or fraction thereof of tax paid, ten per cent; on the excess of one hundred dollars (\$100.00) to five hundred dollars (\$500.00) five per cent; on the excess of five



hundred dollars (\$500.00) to one thousand dollars (\$1,000.00) three per cent; on all sums in excess of one thousand dollars (\$1,000.00) one per cent but not to exceed one hundred and fifty dollars (\$150.00) from any one estate. Provided, however, that except in cases of litigation requiring the filing of a petition or answer in court, the fee in any case shall not exceed the sum of fifty dollars (\$50.00). When the treasurer of state has issued his receipt for the tax in an estate, in which the county attorney has been directed to render legal services, and has performed such services, the treasurer of state shall certify the amount due for such services to the auditor of state, who shall issue his warrant on the treasurer of state in favor of said county attorney for the sum due. If the county attorney is attorney for the executor, administrator or other person interested in the estate, the treasurer of state may employ another attorney to represent the state.

#### **Same.**

S. 34. In the event of uncertainty or of conflicting claims as to fees due county attorneys or clerks under this act, the treasurer of state is empowered to determine the amount of fees, to whom payable, and when the same are due, and as far as possible, such determination shall be in accord with fixed rules made by the treasurer of state.

#### **Reports to Court.**

S. 35. On the first day of each regular term, the court shall require the clerk to present for its inspection the inheritance tax and lien book hereinbefore provided for, together with all reports of administrators, executors and trustees which have been filed pursuant to this act, since the last preceding term. The county attorney shall also attend and make report to the court concerning the progress of all cases pending for the collection of such taxes, together with any other facts, which in his judgment may aid the court in enforcing the general observance of the collateral inheritance tax law. If from information obtained from the records or reports, or from any other source, the court has reason to believe that there is property within its jurisdiction liable to the payment of an inheritance tax, against which proceedings for collection are not already pending, it shall enter an order of record, directing the county attorney to institute such proceedings forthwith. Should any estate, or the name of any grantee or grantees be placed upon the book at the suggestion of the county attorney, the treasurer of state, or other person, in which the papers already on file in the clerk's office do not disclose that an inheritance tax is due or payable, the county attorney shall forthwith give to all parties in interest such notice as the court or judge may prescribe, requiring them to appear on a day to be fixed by the said court or judge, and show cause why the property should not be appraised and subjected to said tax. At any such hearing any person may be required to appear and answer as to his knowledge of any such estate or property. If upon any such hearing the court is satisfied that any property of the decedent or any property devised, granted or donated by him, is subject to the tax, the same proceedings shall be had as in other cases, so far as applicable.

#### **Costs.**

S. 36. In all cases where an estate or interest therein so passes as to be liable to taxation under this act, all costs of the proceedings had for the assessment of such tax shall be chargeable to such estate as other costs in probate proceedings

and to discharge the lien, all costs, as well as the taxes must be paid. In all other cases the costs are to be paid as ordered by the court. When a decision adverse to the state has been rendered, with an order that the state pay the costs, it shall be the duty of the clerk of the court in which such action was pending to certify the amount of such costs to the treasurer of state, who shall, if said costs be correctly certified, and the case has been finally terminated, and the tax if any due has been paid, present the claim to the executive council to audit, and said claim being allowed by said council, the auditor of state is directed to issue a warrant on the treasurer of state in payment of such costs.

#### **Transfers Forbidden till Tax Paid.**

S. 37. No safe deposit company, trust company, bank or other institution, person or persons holding securities or assets of the decedent shall deliver or transfer the same to the executor, administrator or legal representative of said decedent unless the tax for which such securities or assets are liable under this act shall be first paid, or the payment thereof is secured by bond as herein provided. It shall be lawful for and the duty of the treasurer of state personally, or by any person by him duly authorized, to examine such securities or assets at the time of any proposed delivery or transfer. Failure to serve ten days notice of such proposed transfer upon the treasurer of state or to allow such examination on the delivery of such securities or assets to such executor, administrator or legal representative shall render such safe deposit company, trust company, bank or other institution, person or persons liable for the payment of the tax upon such securities or assets as provided in this act.

#### **Foreign Executor, etc., to Pay Tax Before Transfer.**

S. 38. If a foreign executor, administrator or trustee shall assign or transfer any corporate stock or obligations in this state standing in the name of a decedent, or in trust for a decedent, liable to such tax, the tax shall be paid to the treasurer of state on or before the transfer thereof; otherwise the corporation permitting its stock to be so transferred shall be liable to pay such tax, interest and costs, and it is the duty of the treasurer of state to enforce the payment thereof.

#### **Reports by Domestic Corporations.**

S. 39. All Iowa corporations organized for pecuniary profit, shall on July 1st of each year, by its proper officers under oath make a full and correct report to the treasurer of state of all transfers of its stocks made during the preceding year by any person who appears on the books of such corporation as the owner of such stock, when such transfer is made to take effect at or after the death of the owner or transferor, and all transfers which are made by an administrator, executor, trustee, referee, or any person other than the owner or person in whose name the stocks appeared of record on the books of such corporation, prior to the transfer thereof. Such report shall show the name of the owner of such stocks and his place of residence, the name of the person at whose request the stock was transferred, his place of residence and the authority by virtue of which he acted in making such transfer, the name of the person to whom the transfer was made, and the residence of such person; together with such other information as the officers reporting may have relating to estates of persons deceased who may have been owners of stock in such corporation. If it appears that any such stock so transferred is

subject to tax under the provisions of this act, and the tax has not been paid, the treasurer of state shall notify the corporation in writing of its liability for the payment thereof, and shall bring suit against such corporation as in other cases herein provided unless payment of the tax is made within sixty (60) days from the date of such notice.

**Foreign Estate. — Indebtedness.**

S. 40. Whenever any property belonging to a foreign estate, which estate in whole or in part passes to persons not exempt herein from such tax, the said tax shall be assessed upon the market value of said property remaining after the payment of such debts and expenses as are chargeable to the property under the laws of this state. In the event that the executor, administrator or trustee of such foreign estate files with the clerk of the court having ancillary jurisdiction, and with the treasurer of state, duly certified statements exhibiting the true market value of the entire estate of the decedent owner, and the indebtedness for which the said estate has been adjudged liable, which statements shall be duly attested by the judge of the court having original jurisdiction, the beneficiaries of said estate shall then be entitled to have deducted such proportion of the said indebtedness of the decedent from the value of the property as the value of the property within this state bears to the value of the entire estate.

**Foreign Estate. — Assessment of Tax.**

S. 41. Whenever any property, real or personal, within this state belongs to a foreign estate and said foreign estate passes in part exempt from the tax imposed by this act and in part subject to said tax and there is no specific devise of the property within this state to direct heirs or if it is within the authority or discretion of the foreign executor, administrator or trustee administering the estate to dispose of the property not specifically devised to direct heirs or devisees in the payment of debts owing by the decedent at the time of his death, or in the satisfaction of legacies, devises, or trusts given to direct or collateral legatees or devisees or in payment of the distributive shares of any direct and collateral heirs, then the property within the jurisdiction of this state, belonging to such foreign estate, shall be subject to the tax imposed by this act, and the tax due thereon shall be assessed as provided in the next preceding section of this act relating to the deduction of the proportionate share of indebtedness. Provided, however, that if the value of the property so situated exceeds the total amount of the estate passing to other persons than those exempt hereby from the tax imposed by this act such excess shall not be subject to said tax.

**Compromise of Tax.**

S. 42. Whenever an estate charged or sought to be charged with the collateral inheritance tax is of such a nature, or is so disposed, that the liability of the estate is doubtful, or the value thereof cannot with reasonable certainty be ascertained under the provisions of law, the treasurer of state may, with the written approval of the attorney general, which approval shall set forth the reasons therefor, compromise with the beneficiaries or representatives of such estates, and compound the tax thereon; but said settlement must be approved by the district court or judge of the proper court, and after such approval the payment of the amount of the taxes so agreed upon shall discharge the lien against the property of the estate.

**Payment When Persons Entitled are Unknown.**

S. 43. Whenever the heirs or persons entitled to any estate, or any interest therein, are unknown or their place of residence cannot with reasonable certainty be ascertained, a tax of 5 per cent shall be paid to the treasurer of state upon all such estates or interests, subject to refund as provided herein in other cases; provided, however, that if it be afterwards determined that any estate or interest passes to aliens, there shall be paid within sixty (60) days after such determination and before delivery of such estate or property an amount equal to the difference between five per centum, the amount paid, and the amount which such person should pay under the provisions of this act.

**Refund.**

S. 44. When within five years after the payment of the tax, a court of competent jurisdiction may determine that property upon which a collateral inheritance tax has been paid is not subject to or liable for the payment of such tax, or that the amount of tax paid was excessive, so much of such tax as has been overpaid to the treasurer of state shall be returned or refunded to the executor or administrator of such estate, or to those entitled thereto, when a certified copy of the record of such court showing the fact of non-liability of such property to the payment of such tax has been filed with the executive council of the state, the executive council shall if the case has been finally determined issue an order to the auditor of state directing him to issue a warrant upon the treasurer of state to refund such tax. Such order of court shall not be given until fifteen days notice of the application therefor shall have been given to the treasurer of state of the time and place of the hearing of such application, which notice shall be served in the same manner as provided for original notices.

**Estates in Expectancy. — Defeasible. — Contingent.**

S. 45. Estates in expectancy which are contingent or defeasible and in which proceedings for the determination of the tax have not been taken or where the taxation thereof has been held in abeyance, shall be appraised at their full, undiminished value when the persons entitled thereto shall come into the beneficial enjoyment or possession thereof, without diminution for or on account of any valuation theretofore made of the particular estates for purposes of taxation, upon which said estates in expectancy may have been limited.

When an estate, devise, or legacy can be divested by the act or omission of the legatee or devisee, it shall be taxed as if there were no possibility of such divesting.

When a devise, bequest or transfer is one in part contingent, and in part vested so that the beneficiary will come into possession and enjoyment of a portion of his inheritance on or before the happening of the event upon which the possible defeating contingency is based, a tax shall be imposed and collected upon such bequest or transfer as upon a vested interest, at the highest rate possible under the terms of this act if no such contingency existed; provided, that in the event such contingency reduces the value of the estate or interest so taxed, and the amount of tax so paid is in excess of the tax for which such bequest or transfer is liable upon the removal of such contingency, such excess shall be refunded as is provided in section forty-four (44) of this act in other cases.

**Definitions.**

S. 46. In the construction of this act, the words "collateral heirs" shall be held to mean all persons who are not specifically exempt from the tax imposed by the provisions hereof. The word "person" shall include a plural as well as singular, and artificial as well as natural persons. This act shall not be construed to confer upon a county attorney authority to represent the state in any case, and he shall represent the treasurer of state only when especially authorized by him to do so. This act shall apply to all estates subject to taxation under the law repealed by this act if the tax for which such estates are liable shall not have been paid prior to the taking effect of this act.

**Records by State Treasurer.**

S. 47. The treasurer of state shall record in a book kept in his office for that purpose, all estates reported to him as liable for a tax under the provisions of this act, showing —

1. The name of the decedent.
2. The place of his residence or county from which such estate was reported.
3. The date of his death.
4. The name of the administrator, executor or trustee.
5. The appraised value of the property, or the value of any taxable pecuniary legacy.
6. The amount of indebtedness that was deducted before estimating the tax.
7. The amount of tax collected.
8. The amount of fees paid for reporting and collecting such tax.
9. The amount of tax, if any refunded.

He shall also keep a separate record of any deferred estate upon which the tax due is not paid within eighteen (18) months from the death of the decedent, showing substantially the same facts as is required in other cases, and also showing —

- (a) The date and amount of all bonds given to secure the payment of the tax with a list of the sureties thereon.
- (b) The name of the person beneficially entitled to such estate or interest, with place of residence.
- (c) A description of the property or a statement of conditions upon which such deferred estate is based or limited.

**Repeal.**

S. 48. Chapter four (4), of title seven (7), of the supplement to the code, 1907, and chapter ninety-two (92) of the Acts of the Thirty-Third (33) General Assembly and all other acts or parts of acts in conflict herewith, are hereby repealed.

**RULES AND REGULATIONS.**

The following rules and regulations for the assessment and collection of the tax on collateral inheritances in Iowa were drafted and adopted in accordance with the provisions of section six, chapter thirty-seven, of the acts of the Twenty-Seventh General Assembly, which follow: —

The chief justice of the supreme court shall, prior to July 1, 1898, appoint five of the district judges of the state to meet with him at Des Moines on a date to

be by him fixed, for the purpose of framing uniform rules and regulations relative to the assessment and collection of the collateral inheritance tax, for the guidance of the district judges, officers of the court, executors and administrators. Said rules and regulations shall aim to give more publicity to the provisions of this chapter, and to secure the strict enforcement of the same, and when made shall form a part of and be published with the rules of the district courts of the state.

Pursuant to the authority conferred in the above section, Judge H. E. Deemer, chief justice of the supreme court, directed Judges S. M. Weaver, of the eleventh judicial district; L. E. Fellows, of the thirteenth; H. M. Towner, of the third; Z. A. Church, of the sixteenth, and M. J. Wade, of the eighth judicial district of Iowa, to meet with him in Des Moines. The rules and regulations for the assessment and collection of the collateral inheritance tax herewith published were adopted June 11, 1898.

### **Rules and Regulations Relating to the Assessment and Collection of the Collateral Inheritance Tax.**

#### **Rule 1. — Lien Book.**

The clerk of the district court in and for each county shall provide and keep a suitable book, substantially bound and suitably ruled, to be known as the Collateral Inheritance Tax and Lien Book, in which shall be kept a full and accurate record of all proceedings in cases where property is charged or sought to be charged with the payment of a collateral inheritance tax under the laws of this state, to be printed and ruled so as to show, upon one page —

1. The name, place of residence, and date of death of the decedent.
2. Whether the decedent died testate, or intestate, and if testate the record and page where the will was probated and recorded.
3. The name and post-office address of the executor, administrator, trustee or grantee, with date of appointment or transfer.
4. The names, post-office addresses and relationship, if known, of all the heirs, devisees and grantees.
5. The appraised valuation of the personal property.
6. The amount of inheritance tax due upon said personal property.
7. A record of payment with amount and date.
8. Date of filing objections and names of objectors.
9. Blank for index and reference to all proceedings, and for memorandum entries of the court or judge in relation thereto.

Upon the opposite page of such record shall be printed:—

1. "Real estate derived from.....(naming decedent) which is subject to the lien prescribed by the statute for collateral inheritance tax."
2. A full and accurate description of such real estate, by forty-acre or fractional tracts, or by lots, or other complete individual description.
3. The appraised valuation as reported by the appraisers, — with reference to the record of their report, — as to each piece of such real estate.
4. The amount of the inheritance tax due upon each such piece.
5. A record of payments, with dates and amounts.
6. Date of filing objections, and names of objectors.
7. Blank for index and reference to all proceedings, and for memorandum entries of court or judge in relation thereto.

**Rule 2. — Report by Administrators, etc.**

Upon the appointment and qualification of each executor, administrator and testamentary trustee, the clerk issuing the letters shall at the same time deliver to him a blank form upon which he shall be required to make detailed report of the following facts:—

1. Name and last residence of decedent.
2. Date of death.
3. Whether or not he left a will.
4. Name and post-office of executor, administrator or trustee.
5. Name and post-office of surviving wife or husband, if any.
6. If testate, name and post-office of each beneficiary under will.
7. Relationship of each beneficiary to the testator.
8. If intestate, name and post-office of each heir at law.
9. Relationship of each heir at law to the decedent.
10. Inventory of all the real estate of the decedent, giving amount and description of each tract.

Within ten days after his qualification each executor, administrator and testamentary trustee shall make and return to the clerk, under oath, a full and detailed report as indicated in the preceding paragraph, and upon his failure so to do, the clerk shall forthwith report his delinquency to the district court if in session, or to a judge of said court if in vacation, for such order as may be necessary to enforce an observance of these rules.

If it appears from the inventory or report so filed, that the real estate, or any part of it, is subject to an inheritance tax, it shall be the duty of the executor or administrator to cause the lien of the same to be entered upon the lien book in the office of the clerk of the court in each county where each particular tract of said real estate is situated.

**Rule 3. — Duties of the Clerk.**

The clerk shall from time to time enter upon the collateral inheritance tax and lien book, the title of all estates subject to the inheritance tax, as shown by the inventories or lists of heirs filed in this office, or as reported to him by the county attorney or the treasurer of state, and shall enter in said book as against each estate or title at the appropriate place, all such information relating to the situation and condition of the estate as he may be able to obtain from the papers filed in his office, or from the county attorney or the treasurer of state, as may be necessary to the collection and enforcement of the tax. He shall also immediately index all liens entered upon the collateral inheritance tax and lien book in the book kept in his office for that purpose.

Should any estate, or the name of any grantee or grantees, be placed upon the book at the suggestion of the county attorney or the treasurer of state, in which the papers already on file in the clerk's office do not disclose that an inheritance tax is due or payable, the county attorney shall forthwith give to all parties in interest, such notice as the court or judge may prescribe, requiring them to appear on a day to be fixed by the said court or judge, and show cause why the property should not be appraised and subjected to said tax. If upon hearing at the time so fixed, the court is satisfied that any property of the decedent, or any property devised, granted or donated by him, is subject to the tax, the same proceedings shall be had as in other cases, so far as applicable.

**Rule 4. — Appointment of Appraisers.**

At the first term of court in each county, after the publication of these rules, and annually thereafter, the court shall appoint three competent residents and freeholders of said county, to act as appraisers of all property within its jurisdiction, which is charged or sought to be charged with a collateral inheritance tax. Said appraisers shall serve for one year, and until their successors are appointed and qualified. They shall each take an oath to faithfully and impartially perform the duties of the office, but shall not be required to give bond. They shall be subject to removal at any time at the discretion of the court, and the court, or a judge thereof in vacation, may also, in its discretion, either before or after the appointment of the regular appraisers, appoint other appraisers to act in any given case. Vacancies occurring otherwise than by expiration of term, shall be filled by the appointment of the court, or by a judge in vacation.

**Rule 5. — Duties of Appraisers.**

When an estate is opened in which there is property which may be subject to the inheritance tax, the clerk shall forthwith issue a commission to the appraisers who shall fix a time and place for appraisal, and if not practicable to serve the notice provided for by statute, they shall apply to the court or judge for an order as to notice, and upon service of such notice and the making of such appraisal, the said notice return thereon and appraisal shall be filed with the clerk, and a copy of such appraisal shall be filed by the clerk with the treasurer of state.

Any person interested may, within twenty days thereafter, file objections to said appraisal or taxation, and the same shall then stand for trial and further proceedings as provided by statute. If upon such hearing the court finds that the property is not subject to the tax, the court shall upon expiration of time for appeal, when no appeal has been taken, order the clerk to enter upon the lien book a cancellation of any claim or lien for taxes.

**Rule 6. — Duty of County Attorney.**

It shall be the duty of each county attorney to make examination from time to time of all reports filed with the clerk by administrators, executors and trustees, pursuant to law or the provisions of these rules; also to make examination of all foreign wills offered for probate or recorded within his county, as well as of the records of deeds and conveyances in the recorder's office of said county, and if from such examination, or from information or knowledge coming to him from any other source, he finds or believes that any property within his county, or within the jurisdiction of the district court of said county, has since July 4, 1896, passed by will or by the intestate laws of this or any other state, or by deed, grant, sale or gift, made or intended to take effect, in possession or enjoyment after the death of the testator, donor or grantor, to any person other than to or for the use of the father, mother, husband, wife, lineal descendant, adopted child, the lineal descendant of an adopted child of a decedent, or to or for charitable, educational or religious societies, or institutions within this state, he shall make report thereof in writing to the clerk of the district court, embodying in such report, so far as he is able, all the facts mentioned in rule 2 of these rules, and cause the notice required by rule 3 hereof to be properly given and returned.

Any citizen of the state having knowledge of property liable to such tax against which no proceeding for enforcing collection thereof is pending, may report



the same to the county attorney, and it shall be the duty of such officer to investigate the case, and if he has reason to believe the information to be true, he shall forthwith institute such proceedings substantially as above indicated. He shall also advise and assist the clerk and appraisers in the discharge of their duties in cases of this nature, and see that notices required by law and these rules are properly made, served and returned.

**Rule 7. — Duty of Court.**

On the first or second day of each regular term, the court shall require the clerk to present for its inspection, the inheritance tax and lien book hereinbefore provided for, together with all reports of administrators, executors and trustees which have been filed pursuant to these rules, since the last preceding term. The county attorney shall also attend and make report to the court concerning the progress of all cases pending for the collection of such taxes, together with any other facts, which, in his judgment, may aid the court in enforcing the general observance of the collateral inheritance tax law. If from information obtained from the records or reports, or from any other source, the court has reason to believe that there is property within its jurisdiction liable to the payment of an inheritance tax against which proceedings for collection are not already pending, it shall enter an order of record, directing the county attorney to institute such proceedings forthwith.

**Rule 8. — Record.**

In all cases entered upon the inheritance tax and lien book, the clerk shall make a complete record in the proper probate record, of all the proceedings, orders, reports, inventory, appraisements and all other matters and proceedings therein.

**Rule 9. — Costs.**

In all cases where property is found to be liable to taxation under the inheritance tax law, all costs of the proceedings had for the assessment of such tax shall be chargeable to such property, and to discharge the lien upon such property all costs, as well as the taxes, must be paid. In all other cases the costs are to be paid as ordered by the court.

**Rule 10. — Books and Blanks.**

The book herein provided for, and all blanks to be used in carrying out the provisions of the law and of these rules, shall be in form to be approved by the chief justice of the supreme court, which form shall be furnished to the clerk of each county by the treasurer of state.

It shall be the duty of the state treasurer to give such publicity to these rules, and the provisions of the statute regarding the collection of such tax, as may by him be deemed advisable and practicable.

**Rule 11. — Construction.**

These rules are not to be construed as in any manner superseding any of the requirements of the statute governing the levy and collection of collateral inheritance taxes, or as relieving executors, administrators, trustees or officers of court, or any of them, from a strict observance of all the duties which such statute imposes upon them.

These rules shall be in full force and effect from and after the 4th day of July, 1898.

BE IT REMEMBERED, That the above and foregoing rules were adopted this 11th day of June, 1898, by the following: H. E. Deemer, chief justice of the supreme court of Iowa; S. M. Weaver, judge of the eleventh judicial district of Iowa; L. E. Fellows, judge of the thirteenth judicial district of Iowa; H. M. Towner, judge of the third judicial district of Iowa; Z. A. Church, judge of the sixteenth judicial district of Iowa; M. J. Wade, judge of the eighth judicial district of Iowa. Said district judges having been appointed by the said chief justice of the supreme court, pursuant to section six, chapter thirty-seven of the acts of the Twenty-Seventh General Assembly of the state of Iowa.

Witness my hand the 11th day of June, 1898,

H. E. DEEMER,

*Chief Justice of the Supreme Court of Iowa.*

Attest: M. J. WADE, *Secretary.*

**Tables for Determining the Valuation or Present Worth of Life and Term Estates or Annuities and Remainders or Reversionary Interests Computed at Four Per Cent Per Annum, for the Use of the Courts of Iowa in the Assessment of Collateral Inheritance Tax.**

Section seven (7) of chapter fifty-one (51) of the acts of the Twenty-Eighth (28) General Assembly provides:—

"The treasurer of state is directed to obtain and publish for the use of the courts and appraisers throughout the state tables showing the average expectancy of life and the value of annuities or life and term estates, and the present worth or value of remainders and reversions. The taxable value of life or term, deferred or future estates shall be computed at the rate of 4 per cent interest."

Pursuant to the foregoing provisions, the following tables for determining the taxable value,—namely, the present worth, of life estates or annuities and remainders or reversionary interests are hereby published and promulgated for the use of the courts and appraisers of the state.

Table No. 1 gives the basis for valuing "Life Estates" or annuities, the proceeds of which the beneficiary enjoys during his or her life.

Table No. 2 relates to "Term Estates" or annuities terminable at a certain period, definitely stated in the provisions of the instrument creating the estate.

The tables printed herein are those used by the United States Government in the assessment of the inheritance tax under the war revenue act of June 13, 1898, prepared for the internal revenue service under the direction of the government actuary, Mr. J. S. McCoy. They are based upon the "Actuaries' or Combined Experience Tables," money being considered worth four (4) per cent per annum. Both the tables and notes are reproduced from circulars No. 527, March, 1899, and No. 21,231, December, 1899, issued by the commissioner of internal revenue.

The treasurer of state is indebted to Hon. G. W. Wilson, commissioner of internal revenue at Washington, D. C., for permission to reprint and use the tables employed by the national government, and he desires here to acknowledge the courtesy and the very valuable favor rendered by him.

TABLE NO. 1. — Single-life, 4 per cent, showing the present worth of an annuity, or life interest, and of a reversionary interest.

Age.	Mean redemption period.	Annuity or present value of one dollar due at the end of each year during the life of a person of specified age.	Reversion, or present value of one dollar due at the end of the year of death of a person of specified age.	Age.	Mean redemption period.	Annuity or present value of one dollar due at the end of each year during the life of a person of specified age.	Reversion, or present value of one dollar due at the end of the year of death of a person of specified age.
0	23.179	\$14.72829	\$0.39507	50	18.113	\$12.47032	\$0.48191
1	30.552	17.30771	0.29586	51	17.527	12.17919	0.49311
2	35.626	18.69578	0.24247	52	16.947	11.88408	0.50446
3	37.572	19.15901	0.22465	53	16.372	11.58531	0.51595
4	38.702	19.41226	0.21491	54	15.804	11.28325	0.52757
5	39.352	19.55301	0.20950	55	15.243	10.99789	0.53931
6	39.654	19.61731	0.20703	56	14.689	10.66982	0.55116
7	39.691	19.62502	0.20673	57	14.143	10.35931	0.56310
8	39.625	19.61097	0.20727	58	13.603	10.04630	0.57514
9	39.264	19.53413	0.21022	59	13.072	9.73131	0.58726
10	38.891	19.45359	0.21332	60	12.549	9.41474	0.59943
11	38.507	19.36943	0.21656	61	12.029	9.09765	0.61163
12	38.113	19.28184	0.21993	62	11.532	8.78052	0.62382
13	37.710	19.19065	0.22344	63	11.039	8.46412	0.63600
14	37.298	19.09590	0.22708	64	10.557	8.14888	0.64812
15	36.877	18.99764	0.23086	65	10.088	7.83552	0.66017
16	36.447	18.89569	0.23478	66	9.630	7.52476	0.67212
17	36.010	18.79010	0.23884	67	9.185	7.21699	0.68396
18	35.565	18.68070	0.24305	68	8.753	6.91298	0.69565
19	35.113	18.56751	0.24740	69	8.333	6.61301	0.70719
20	34.652	18.45038	0.25191	70	7.926	6.31716	0.71857
21	34.186	18.32932	0.25656	71	7.532	6.02612	0.72976
22	33.711	18.20416	0.26138	72	7.151	5.74003	0.74077
23	33.230	18.07471	0.26636	73	6.782	5.45928	0.75157
24	32.742	17.94097	0.27150	74	6.425	5.18402	0.76215
25	32.248	17.80274	0.27682	75	6.081	4.91463	0.77251
26	31.747	17.65984	0.28231	76	5.749	4.65125	0.78264
27	31.239	17.51224	0.28799	77	5.428	4.39383	0.79254
28	30.725	17.35968	0.29386	78	5.119	4.14286	0.80220
29	30.205	17.20225	0.29991	79	4.823	3.89858	0.81159
30	29.678	17.03961	0.30617	80	4.537	3.66071	0.82074
31	29.147	16.87176	0.31262	81	4.262	3.42900	0.82965
32	28.608	16.69846	0.31929	82	3.995	3.20258	0.83836
33	28.067	16.51964	0.32617	83	3.737	2.98024	0.84691
34	27.516	16.33503	0.33327	84	3.484	2.76106	0.85534
35	26.961	16.14437	0.34060	85	3.236	2.54366	0.86371
36	26.401	15.94755	0.34817	86	2.992	2.32795	0.87200
37	25.834	15.74427	0.35599	87	2.752	2.11384	0.88024
38	25.263	15.53421	0.36407	88	2.517	1.90115	0.88842
39	24.685	15.31722	0.37241	89	2.286	1.69107	0.89650
40	24.101	15.09295	0.38104	90	2.062	1.48540	0.90441
41	23.511	14.86102	0.38996	91	1.845	1.28432	0.91214
42	22.915	14.62122	0.39918	92	1.637	1.09024	0.91961
43	22.313	14.37356	0.40871	93	1.442	0.90647	0.92667
44	21.708	14.11860	0.41852	94	1.263	0.73687	0.93320
45	21.103	13.85713	0.42857	95	1.103	0.58435	0.93906
46	20.499	13.58958	0.43886	96	0.975	0.46182	0.94378
47	19.896	13.31698	0.44935	97	0.877	0.36698	0.94742
48	19.298	13.03942	0.46002	98	0.746	0.24038	0.95229
49	18.703	12.75716	0.47088	99	0.500	0.00000	0.96154

**Explanatory Notes and Examples.**

The first column shows the age of the person under consideration.

The second column shows the corresponding "mean redemption period" and represents the time in years in which the present values of annuities and reversions certain will become equal, respectively, to the present value of annuities and reversions contingent on the duration of life. The "mean redemption period" is a mean between the last payment of the annuity and the payment of the reversion, averaging six months later than the former payment and six months earlier than the latter payment. (This period is ordinarily designated the expectancy of life during which a beneficiary will enjoy the life estate.)

The third column shows the present value of an annuity for life of one dollar per annum, the last payment being made at the end of the year prior to the one in which death occurs.

The fourth column shows the present worth of one dollar payable at the end of the year in which death occurs.

**Example 1.**

A person dying bequeaths to his nephew, aged forty years, an annuity of one thousand dollars during life. What is the present value of the annuity?

Reference to the foregoing table shows that the present value of one dollar a year, payable at the end of each year during the life of a person aged forty years, is fifteen dollars, nine cents, two mills and ninety-five one-hundredths of a mill (\$15.09295); therefore, the present value of one thousand dollars is one thousand times as much, or fifteen thousand and ninety-two dollars and ninety-five cents the amount upon which tax accrues.

**Example 2.**

A person dying bequeaths to his sister, aged thirty-five years, a life interest in personal property amounting to fifty thousand dollars (\$50,000), the estate to revert absolutely at her death to other collateral parties. Required the present value, at the date of death of the testator, of the life interest of the sister in the estate; also, required at the same date, the present value of the reversionary interest of said other parties in the estate.

At a net interest of four per cent per annum, the assumed rate, the estate of \$50,000 will realize an income or annuity of \$2,000 per annum. The present value of the sum of \$1, payable at the end of each year during the life of a person aged thirty-five years, is found by the table to be \$16.14437, and the present value of an annuity of \$2,000 for the same time would be two thousand times as much, or \$32,288.74, the amount upon which tax accrues.

The reversion or present value of \$1.00, due at the end of the year of death of a person aged thirty-five years, is found by the table to be \$0.34060, and such value of \$50,000 would be fifty thousand times as much, or \$17,030, the amount upon which tax accrues.

TABLE NO. 2. — Present value of annuities and reversions certain upon a 4 per cent basis.

Number of years.	Present worth of an annuity of one dollar, payable at the end of each year, for a certain number of years.	Present worth of one dollar, payable at the end of a certain number of years.	Number of years	Present worth of an annuity of one dollar, payable at the end of each year, for a certain number of years.	Present worth of one dollar, payable at the end of a certain number of years.
	<i>Annuity.</i>	<i>Reversion.</i>		<i>Annuity.</i>	<i>Reversion.</i>
1	\$ 0.96154	\$0.961538	16	11.65229	\$0.533908
2	1.88609	0.924556	17	12.16567	0.513373
3	2.77509	0.888996	18	12.65929	0.493628
4	3.62989	0.854804	19	13.13394	0.474642
5	4.45182	0.821927	20	13.59032	0.456387
6	5.24214	0.790314	21	14.02916	0.438834
7	6.00205	0.759918	22	14.45111	0.421955
8	6.73274	0.730690	23	14.85684	0.405726
9	7.43533	0.702587	24	15.24696	0.390121
10	8.11089	0.675564	25	15.62208	0.375117
11	8.76047	0.649581	26	15.98277	0.360689
12	9.38507	0.624597	27	16.32958	0.346816
13	9.98565	0.600574	28	16.66306	0.333477
14	10.56312	0.577475	29	16.98371	0.320651
15	11.11839	0.555265	30	17.29203	0.308319

**Example.**

A man dies leaving personal property to the amount of \$50,000, his niece to have the income from it for twenty years, it then to revert to his youngest brother. What is the present worth of these legacies?

The income from \$50,000 would be \$2,000 per annum, assuming money at 4 per cent.

## KANSAS.

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### In General.

Kansas adopted a tax on all inheritances in 1909. The exemptions apply to each individual share, not to the estate as a whole. If the Kansas portion of the inheritance is less than the exemption Kansas collects no tax.

Kansas is taxing stock of a Kansas corporation owned by a non-resident, and registered bonds as well. The corporation is held responsible if it transfers securities before the tax is paid.

The Kansas statute contains the same reciprocal clause for avoiding double taxation that is found in Massachusetts. Personal property of a deceased resident outside the state which is taxed by another state or country is not taxed by Kansas unless such tax is less than the Kansas tax, and then Kansas collects only the difference. Property of a non-resident in Kansas, including stock wherever situated in a Kansas corporation, will not be taxed (except for the difference if Kansas rates are higher) if owned by a resident of a state which extends similar courtesies to residents of Kansas. Massachusetts, Maine, Vermont and New York seem to be the only states that do so.

It is the practice in Kansas to require a complete inventory of the estate of a non-resident which has any property subject to Kansas jurisdiction.

### Constitutional Limitations.

**Kansas Constitution 1859, a. 11, s. 1.**

The legislature shall provide for a uniform and equal rate of assessment and taxation; but all property used exclusively for state, county, municipal, literary, educational, scientific, religious, benevolent and charitable purposes and personal property to the amount of at least two hundred dollars for each family, shall be exempted from taxation.

### List of Statutes.

1909. Statutes of Kansas, c. 248.

1909. General Statutes, c. 116, a. 7, ss. 9265 to 9291.

## THE PRESENT ACT.

Kansas St. 1909, c. 248, approved March 12, 1909, published in official state paper March 16, 1909.

General Statutes of 1909, ss. 9265 to 9291.

AN ACT TO PROVIDE FOR THE ASSESSMENT AND TAXATION OF LEGACIES AND SUCCESSIONS and to prescribe the manner and method by which to collect the taxes for which such provision is herein made.

**S. 9265. Legacies and successions subject to taxation.** S. 52. All property, corporeal or incorporeal, and any interest therein, within the jurisdiction of the state, whether belonging to the inhabitants of the state or not, which shall pass by will or by the laws regulating intestate succession, or by deed, grant or gift made in contemplation of death, or made or intended to take effect in possession or enjoyment after the death of the grantor, to any person, absolutely or in trust — except in case of a *bona fide* purchase for full consideration in money or money's worth; and except property to or for the use of literary, educational, scientific, religious, benevolent and charitable societies or institutions: *Provided*, such use entitles the property so passing to be exempt from taxation; and except property to or for the use of the state, a county or a municipality for public purposes; and except property to or for the use of a class herein designated as class A, being the husband, wife, lineal ancestor, lineal descendant, adopted child, the lineal descendant of any adopted child, the wife or widow of a son or the husband of a daughter of a decedent; and except property to or for the use of a class herein designated as class B, being the brother, sister, nephew or niece of a decedent, not to exceed twenty-five thousand dollars, shall be subject to a tax of five per cent of its value and all such property which shall so pass in excess of twenty-five thousand dollars and not to exceed fifty thousand dollars shall be subject to a tax of seven and one-half per cent of its value; and all such property which shall so pass in excess of fifty thousand dollars and not to exceed one hundred thousand dollars shall be subject to a tax of ten per cent of its value; and all such property which shall so pass in excess of one hundred thousand dollars and not to exceed five hundred thousand dollars shall be subject to a tax of twelve and one-half per cent of its value; and all such property which shall so pass in excess of five hundred thousand dollars shall be subject to a tax of fifteen per cent of its value; and all such property which shall so pass to or for the use of a member of class A not to exceed twenty-five thousand dollars shall be subject to a tax of one per cent of its value; and all such property which shall so pass to or for the use of a member of class A in excess of twenty-five thousand dollars and not to exceed fifty thousand dollars shall be subject to a tax of two per cent of its value; and all such property which shall so pass to or for the use of a member of class A in excess of fifty thousand dollars and not to exceed one hundred thousand dollars shall be subject to a tax of three per cent of its value; and all such property which shall so pass to or for the use of a member of class A in excess of one hundred thousand dollars and not to exceed five hundred thousand dollars shall be subject to a tax of four per cent of its value; and all such property which shall so pass to or for a member of class A in excess of five hundred thousand dollars shall be subject to a tax of five per cent of its value; and all such property which shall so pass to or for the use of a member of class B not to exceed twenty-five thousand dollars shall be

subject to a tax of three per cent of its value; and all such property which shall so pass to or for the use of a member of class B in excess of twenty-five thousand dollars and not to exceed fifty thousand dollars shall be subject to a tax of five per cent of its value; and all such property which shall so pass to or for the use of class B in excess of fifty thousand dollars and not to exceed one hundred thousand dollars shall be subject to a tax of seven and one-half per cent of its value; and all such property which shall so pass to or for the use of a member of class B in excess of one hundred thousand dollars and not to exceed five hundred thousand dollars shall be subject to a tax of ten per cent of its value; and all such property which shall so pass to or for a member of class B in excess of five hundred thousand dollars shall be subject to a tax of twelve and one-half per cent of its value; and all taxes hereinafter provided for shall be for the use of the state; and administrators, executors and trustees, and any grantees under any such conveyance made during the grantor's life, shall be liable for such taxes, with interest at the legal rate, until the same shall have been paid: *Provided*, that no bequest, devise or distributive share of an estate which shall so pass to or for the use of a husband, wife, father, mother, child or adopted child of the deceased, shall be subject to the provisions of this act, unless its value exceeds five thousand dollars: *And provided further* that no bequest, devise or distributive share of an estate which shall so pass to or for the use of a brother, sister, nephew or niece of the deceased shall be subject to the provisions of this act unless its value exceeds one thousand dollars. Property shall be deemed to have been transferred by grant or gift in contemplation of death, under this act, when such grant or gift shall have been executed within one year prior to the death of the grantor or donor. (L. 1909, c. 248, s. 1; March 16.)

**S. 9266. Property out of state, or of non-resident within state.** S. 53. Property of a resident of the state, which is not therein at the time of his death, shall not be taxable under the provisions of this act if legally subject in another state or country to a tax of like character and amount to that hereby imposed: *Provided*, such tax be actually paid, guaranteed or secured in such other state or country. If, however, such property be legally subject in another state or country to a tax of like character but of less amount than that hereby imposed, and such tax be actually paid, guaranteed or secured as aforesaid, such property shall be taxable under this act to the extent of the excess for which such property would otherwise be liable hereunder over the tax thus actually paid, guaranteed or secured. Property of the estate of a non-resident decedent, which is situated in the state at the time of his death, if subject to a tax of like character with that imposed by this act by the law of the state or country where decedent had his residence, shall be subject only to such portion of the tax hereby imposed as may be in excess of such tax imposed by the laws of such other state or country: *Provided*, that a like exemption is made by the laws of such other state or country in favor of estates of citizens of this state, but in such cases no exemption shall be allowed until the tax provided for by the law of such other state or country shall be actually paid, guaranteed or secured in accordance with law.

**S. 9267. Payment of taxes imposed by this act.** S. 54. Except as hereinafter provided, taxes imposed by the provisions of this act shall be payable to the county treasurer of the county in which is situated the probate court having jurisdiction as in this act provided, by the executors, administrators or trustees,



at the expiration of one year after the date of their giving bond; but if legacies or distributive shares are paid within the one year, the taxes thereon shall be payable at the same time. In cases where property is transferred by deed, grant or gift made in contemplation of death, the tax thereon shall be due and payable at the time of such transfer. In all cases where there shall be a grant, devise, descent or bequest, to take effect in possession or come into actual enjoyment after the expiration of one or more life estates or after a term of years, the taxes thereon shall be payable by the executors, administrators or trustees in office when such right of possession accrues, or, if there is no such executor, administrator or trustee, by the person so entitled thereto, at the date when the right of possession accrues to the person or persons so entitled. If the taxes contemplated by this act are not paid when due, interest at the legal rate shall be charged and collected from the time the same becomes payable. Property of which a decedent died seized or possessed, subject to taxes as aforesaid, in whatever form or investment it may happen to be, and all property acquired in substitution therefor, shall be charged with a lien for all taxes and interest thereon which are or may become due on such property; but said lien shall not affect any personal property after the same has been sold or disposed of for value by the executors, administrators or trustees. The lien charged by this act upon any real estate or separate parcel thereof may be discharged by the payment of all taxes due and to become due which are secured by such lien on real estate, or such lien for taxes may be satisfied, in relation to any real estate or separate parcel thereof, on condition that the payment of the tax to the state is first secured by bond or deposit or that other real estate is substituted in the place of that which is sought to be released: *Provided*, that the probate court having jurisdiction shall first approve the bond or deposit tendered or in advance thereof shall approve of the substitution of other real estate as security for the taxes, in lieu of that which is to be released.

**S. 9268. Deposit when bequest or grant is contingent, etc.** S. 55. In every case where there shall be a bequest or grant of personal estate made or intended to take effect in possession or enjoyment after the death of the grantor, to take effect in possession or come into actual enjoyment after the expiration of one or more life estates or a term of years, whether conditioned upon the happening of a contingency, or dependent upon the exercise of a discretion, or subject to a power of appointment or otherwise, the executor or administrator or grantor may deposit with the county treasurer a sum of money sufficient in the opinion of the said county treasurer to pay all taxes which may become due upon such bequest or grant, and the person or persons having the right to the use or income of such personal estate shall be entitled to receive from the said county treasurer interest at the rate of four per cent per annum upon such deposit, and when said tax shall become due the said county treasurer shall repay to the persons entitled thereto the difference between the tax certified and the amount deposited; or any executor, administrator, trustee or grantee, or any person interested in such bequest or grant may give bond to the probate court having jurisdiction of the estate of the decedent, in such amount and with such sureties as said court may approve, with the condition that the obligor shall notify the tax commission when said tax becomes due and shall then pay the same to the county treasurer.

**S. 9269. How tax assessed.** S. 56. Except as hereinafter provided, said tax shall be assessed upon the actual value of the property at the time of the

death of the decedent. In every case where property is transferred by deed, grant or gift made in contemplation of death, the tax thereon shall be a lien on the interest of the beneficiary therein from the date of transfer and shall be assessed when the beneficiary becomes entitled to the possession and enjoyment thereof. In every case where there shall be a devise, descent, bequest or grant to take effect in possession or enjoyment after the expiration of one or more life estates or a term of years, the tax shall be assessed on the actual value of the property or the interest of the beneficiary therein at the time when he becomes entitled to the same in possession or enjoyment. The value of an annuity or a life interest in any such property, or any interest therein less than an absolute interest, shall be determined by the "American Experience Tables" at four per cent compound interest.

**S. 9270. Payment on future interests.** S. 57. Any person or persons entitled to a future interest or to future interests in any property may pay the tax on account of the same at any time before such tax would be due in accordance with the provisions hereinbefore contained, and in such cases the tax shall be assessed upon the actual value of the interest at the time of the payment of the tax, and such value shall be determined by the tax commission as hereinafter provided. In every case in which it is impossible to compute the present value of the future interest the tax commission may, with the approval of the attorney general, effect such settlement of the tax as it shall deem to be for the best interests of the state, and payment of the sum so agreed upon shall be a full satisfaction of such tax.

**S. 9271. Bequests in lieu of compensation.** S. 58. If a testator gives bequeaths or devises to his executors or trustees any property otherwise liable to said tax, in lieu of their compensation, the value thereof in excess of reasonable compensation, as determined by the probate court upon the application of any interested party or of the tax commission, shall nevertheless be subject to the provisions of this act.

**S. 9272. Duty of executor, etc.** S. 59. An executor, administrator or trustee holding property subject to said tax shall deduct the tax therefrom or collect it from the legatee or person entitled to said property; and he shall not deliver property or a specific legacy subject to said tax until he has collected the tax thereon. An executor or administrator shall collect taxes due upon land which is subject to tax under the provisions hereof from the heirs or devisees entitled thereto, and he may be authorized to sell said land according to the provisions of section 11 if they refuse or neglect to pay said tax.

**S. 9273. Legacy a charge on real estate.** S. 60. If a legacy subject to said tax is charged upon or payable out of real estate, the heir or devisee, before paying it, shall deduct said tax therefrom and pay it to the executor, administrator or trustee, and the tax shall remain a lien upon said real estate until it is paid. Payment thereof may be enforced by the executor, administrator or trustee in the same manner as the payment of the legacy itself could be enforced.

**S. 9274. Provision in will for tax.** S. 61. When provision is made by any will or other instrument for payment of the legacy or succession tax upon any

gift thereby made out of any property other than that so given, no tax shall be chargeable upon any money to be applied in payment of such tax.

**S. 9275. Sale of real estate to pay tax.** S. 62. The probate court of the proper county may authorize executors, administrators and trustees to sell the real estate of a decedent for the payment of such tax in the same manner as it may authorize them to sell real estate for the payment of debts.

**S. 9276. Penalty, failing to file inventory.** S. 63. An inventory and appraisal under oath of every estate shall be filed in the probate court by the executor, administrator or trustee within three months after his appointment. If he neglects or refuses to file such inventory and appraisal he shall be liable to a penalty of not more than five thousand dollars, which shall be recovered in the proper district court by the attorney general or county attorney of the proper county at the instance of the tax commission, in the name of the state, for the use of the state; and the probate judge shall notify the tax commission within thirty days after the expiration of said three months of the failure of any executor, administrator or trustee to file an inventory and appraisal in his office.

**S. 9277. Record of inventory; transmission.** S. 64. The probate judge shall record the inventory and appraisal of every estate which is filed in his office, and he shall, within thirty days after the same has been filed, send by mail to the tax commission such inventory and appraisal or a copy thereof. The probate judge shall also, within the same period, send by mail to the tax commission a copy of the will of the decedent, if such has been allowed by the probate court. The probate judge shall also furnish such copies of papers in his office as the tax commission shall require, and shall furnish information as to the records and files in his office in such form as the tax commission may require. The tax commission shall excuse the probate court from filing inventories or copies of inventories and of wills of estates no part of which appears to be subject to a tax under the provisions of this chapter.

**S. 9278. Payment of tax on stock transferred by foreign executor, etc.** S. 65. If a foreign executor, administrator or trustee assigns or transfers any stock in any national bank located in this state or in any corporation organized under the laws of this state owned by a deceased non-resident at the date of his death and liable to a tax under the provisions of this act, the tax shall be paid to the county treasurer of the proper county at the time of such assignment or transfer; and if it is not paid when due, such executor, administrator or trustee shall be personally liable therefor until it is paid. A bank located in this state or a corporation organized under the laws of this state which shall record a transfer of any share of its stock made by a foreign executor, administrator or trustee, or issue a new certificate for a share of its stock at the instance of a foreign executor, administrator or trustee, before all taxes imposed thereon by the provisions of this act have been paid, shall be liable for such tax in an action of contract brought by the county attorney of the proper county or the attorney general in the name of the state and at the instance of either the probate court or the tax commission.

**S. 9279. Assets of estate of non-resident not delivered, until.** S. 66. Securities or assets belonging to the estate of a deceased non-resident shall not be

delivered or transferred to a foreign executor, administrator or legal representative of said decedent without serving notice upon the tax commission of the time and place of such intended delivery or transfer seven days at least before the time of such delivery or transfer. The tax commission, by any member or by representative, may examine such securities or assets prior to the time of such delivery or transfer. Failure to serve such notice or to allow such examination shall render the person or corporation making the delivery or transfer liable to the payment of the tax due upon said securities or assets, in an action brought by the county attorney of the proper county or the attorney general in the name of the state.

**S. 9280. Repayment of tax.** S. 67. If a person who has paid such tax afterward refunds a portion of the property on which it was paid, or if it is judicially determined that the whole or any part of such tax ought not to have been paid, such tax, or the due proportion thereof, shall be repaid to him by the executor, administrator or trustee.

**S. 9281. Value of property, how determined.** S. 68. The value of the property upon which the tax is computed shall be determined by the tax commission and notified by it to the person or persons by whom the tax is payable and to the probate court and county treasurer of the proper county, and such determination shall be final unless the value so determined shall be reduced by proceedings as herein provided. At any time within three months after such determination the probate court shall, upon the application of any party interested in the succession, or on application of the executor, administrator or trustee, appoint three disinterested appraisers, who, first being sworn, shall appraise such property at its actual value in money as of the day of the death of the decedent, and shall make return thereof to said court. Such return, when accepted by said court, shall be final: *Provided*, that any party aggrieved by such appraisal shall have an appeal upon matters of law. One-half of the fees of said appraisers, as determined by the judge of said court, shall be paid by the county treasurer, and one-half of said fees shall be paid by the other party or parties to said proceedings.

**S. 9282. Commission determine amount of tax due.** S. 69. The tax commission shall determine the amount of tax due and payable upon any estate, or upon any part thereof, and shall certify the amount so due and payable to the probate court and to the county treasurer and to the person or persons by whom the tax is payable; but in the determination of the amount of any tax said tax commission shall not be required to consider any payments on account of debts or expenses of administration which have not been allowed by the probate court having jurisdiction of said estate. Payment of the amount so certified shall be a discharge of the tax. An executor, administrator, trustee or grantee who is aggrieved by any determination of the tax commission may within one year after the payment of any tax to the county treasurer, apply by a petition to the probate court having jurisdiction of the estate of the decedent for the abatement of said tax, or any part thereof, and if the court adjudges that said tax, or any part thereof, was wrongly exacted it shall order an abatement of such portion of said tax as was assessed without authority of law. Upon a final decision ordering an abatement of any portion of said tax the county treasurer shall refund the amount adjudged to have been illegally exacted, with interest at the legal rate, without any further act or resolve making appropriation therefor.

**S. 9283. Jurisdiction of probate court.** S. 70. The probate court having jurisdiction of the settlement of the estate of the decedent, subject to appeal as in other cases, shall hear and determine all questions relative to said tax, and the county attorney of the proper county, at the request of the tax commission or of the county treasurer, shall represent the state in any such proceedings. If the court shall find that any tax remains due, it shall order the executor, administrator or trustee to pay the same, with interest and costs; and if it appears that there are no goods or assets of the estate in his hands, the court may assess the amount of the tax against the executor, administrator or trustee, as if for his own debt, and may enforce compliance with such order by proper procedure as now authorized by probate practice; but the administrators, executors, trustees and grantees hereinbefore mentioned shall be personally liable only for such taxes as shall be payable while they continue in the said offices or have title as such grantees, respectively. In the cases where the tax is due and payable by and collectible from the beneficiary, all actions shall be prosecuted by the attorney general or the county attorney of the proper county in the name of the state, and such actions may be brought in the same courts as other actions for money.

**S. 9284. Administration at instance of commission.** S. 71. If upon the decease of a person leaving an estate liable to a tax under the provisions of this act a will disposing of such estate is not offered for probate, or an application for administration made within four months after such decease, the probate court, upon application by the county attorney of the proper county or the attorney general at the instance of the tax commission, shall appoint an administrator if it then appears that there is no will in existence.

**S. 9285. Final account not allowed unless tax paid.** S. 72. No final account of an executor, administrator or trustee shall be allowed by the probate court unless such account shows, and the judge of said court finds, that all taxes imposed by the provisions of this act upon any property or interest therein belonging to the estate to be settled by said account and already payable have been paid, and that all taxes which may become due on said estate have been paid or settled as hereinbefore provided, or that the payment thereof to the state is secured by bond or deposit or by lien on real estate. The certificate of the tax commission and the receipt of the county treasurer for the amount of the tax therein certified shall be conclusive as to the payment of the tax, to the extent of said certification.

**S. 9286. Proceedings for recovery of taxes.** S. 73. The county attorney of the proper county or the attorney general, at the instance of the county treasurer or the tax commission, shall commence proceedings for the recovery of any of said taxes within six months after the same become payable, and also whenever the judge of a probate court certifies to him that the final account of an executor, administrator or trustee has been filed in such court and that the settlement of the estate is delayed because of the non-payment of said tax. The probate court shall so certify upon the application of any heir, legatee or other person interested therein, and may extend the time of payment of said tax whenever the circumstances of the case require.

**S. 9287. Act not apply.** S. 74. This act shall not apply to estates of persons deceased prior to the date when it takes effect, or to property passing by deed, grant, sale or gift made prior to said date.

**S. 9288. Report of county treasurer.** S. 75. Each county treasurer shall make a report, under oath, to the state treasurer on the 1st day of January, April, July and October, respectively, of each year, of all taxes received by him under this act, which report shall state for what estate and by whom and when paid. The form of such report may be prescribed by the tax commission, and all moneys received in pursuance of this act by such treasurer shall be turned over to the state treasurer by the county treasurer, in such manner as the laws at the time in force in relation to drawing of state moneys from county treasurers shall direct.

**S. 9289. Per cent retained by county treasurer.** S. 76. The county treasurer shall retain, for the use of the county, as compensation to the county for services of county officers, out of all taxes paid to and accounted for by him each year under this act, five per cent of the tax paid on the first fifty thousand dollars, three per cent on the next fifty thousand dollars, and two per cent on all additional sums.

**S. 9290. Tax paid to state treasury.** S. 77. All taxes levied and collected under this act, less any expenses of collection, shall be paid into the treasury of the state for the benefit of the general revenue fund, and shall be applicable to such purposes as the legislature by law may direct.

**S. 9291. Definitions of terms.** S. 78. The words "estate" and "property," as used in this act, shall be taken to mean the real, personal and mixed property or interest therein of the testator, intestate, grantor, bargainor, vendor or donor which shall pass or be transferred to legatees, devisees, heirs, next of kin, grantees, donees, vendees or successors, and shall include all personal property within or without the state. The word "transfer," as used in this act, shall be taken to include the passing of property or any interest therein in possession or enjoyment, present or future, by inheritance, descent, devise, succession, bequest, grant, deed, bargain, sale, gift or appointment in the manner herein prescribed. The word "decedent," as used in this act shall include the testator, intestate, grantor, bargainor, vendor or donor.

## KENTUCKY.

### In General.

Kentucky adopted a collateral inheritance tax in 1906.

The attorney general has ruled that stock of a Kentucky corporation owned by a deceased non-resident is subject to the tax. Kentucky claims a tax on stock owned by a non-resident in a foreign corporation which owns property in Kentucky if the proportionate value of the Kentucky property can be ascertained.

### Constitutional Limitations.

#### Kentucky Constitution, 1890.

S. 171. The general assembly shall provide by law an annual tax, which, with other resources, shall be sufficient to defray the estimated expenses of the commonwealth for each fiscal year. Taxes shall be levied and collected for public purposes only. They shall be uniform upon all property subject to taxation within the territorial limits of the authority levying the tax; and all taxes shall be levied and collected by general laws.

S. 172. All property, not exempted from taxation by this constitution, shall be assessed for taxation at its fair cash value, estimated at the price it would bring at a fair voluntary sale; and any officer, or other person authorized to assess values for taxation, who shall commit any willful error in the performance of his duty, shall be deemed guilty of misfeasance, and upon conviction thereof shall forfeit his office, and be otherwise punished as may be provided by law.

### List of Statutes.

1906. Statutes of Kentucky, c. 22, a. 19, p. 240.

1910. " " " c. 36, p. 95.

Statutes of Kentucky (Russell 1909) a. 6, ss. 6117 to 6131, inclusive. (This is the Act of 1906 above referred to.)

Ky. St. 1909, s. 4281a to 4281s. (The act of 1906.)

[For report of Sheriff as to revenue collected, etc., see section 6001 of Statutes of Kentucky, 1909.]

Ky. St. 1906, c. 22, a. 19, p. 240, covers the taxation of inheritances. This statute was approved March 15, 1906, and is printed *post*, p. 495 *et seq.*

Ky. St. 1910, c. 36, p. 95, approved March 21, 1910, provides that any money that has been paid under the inheritance tax,

section 4281a, prior to October 27, 1908, the date of the decision in *Booth v. Commonwealth*, where the amount of the legacy was no more than five hundred dollars, shall be refunded.

### History.

No inheritance tax was ever imposed in Kentucky prior to the statute of 1906. *Booth v. Commonwealth*, 130 Ky. 88, 113 S. W. 61, 63.

### Likeness to Maine Statute.

The Kentucky statute is practically identical with that of Maine. *Booth v. Commonwealth*, 130 Ky. 88, 113 S. W. 61.

### Nature.

An inheritance tax is a special or excise tax. *Booth v. Commonwealth*, 130 Ky. 88, 113 S. W. 61.

It is insisted that as the tax is a certain per cent of the value of the estate and the property pays it, it is therefore a tax on the property itself. But the court, relying on *Eyre v. Jacobs*, 14 Gratt. 422, remarks that this is by no means a necessary logical conclusion, that the intention of the legislature was plainly to tax the transmission of property by devise or descent to collateral kindred and to require that a party then taking the benefit of a civil right accrued to him under the law should pay a certain premium for its enjoyment, and as it was thought just and reasonable that the amount of the premium should bear a certain proportion to the value of the subject enjoyed it is fixed at a certain percentum upon the value of the whole estate transmitted. *Booth v. Commonwealth*, 130 Ky. 88, 113 S. W. 61.

### What Law Applies when Remainder Void.

A will left property to A. B. with power to dispose of it absolutely by will or otherwise and further provided that any part of the property undisposed of at the death of A. B. should go to the heirs of the testator. The provision over to the heirs was void under Kentucky law and therefore the heirs took by descent from A. B. and not under the will of the testator, and therefore the succession was subject to an inheritance tax, the statute of 1906 being passed after the original testator died and before the death of A. B. *Commonwealth v. Stoll*, 132 Ky. 234, 116 S. W. 687, withdrawing opinion 114 S. W. 279.



### Source of Power to Tax Inheritances.

The privilege or right to take property by inheritance or devise is not a natural or inherent right of person but is a creature of the law and is subject to regulation by statute. *Booth v. Commonwealth*, 130 Ky. 88, 113 S. W. 61.

"The right of property, however, is an inherent or inalienable right of the citizen, and 'consists in the free use, enjoyment, and disposal of his acquisitions, without any control or diminution, save only of the laws of the land.' Blackstone's Com., Vol. 1, p. 138. But we venture to say that among the absolute rights of individuals enumerated by Blackstone no mention is made of a right to inherit property from another. All estates derived upon the death of another have been created by law, and are for that reason always subject to regulation by statute; indeed, frequent changes by legislative enactment have been and will doubtless yet be made in the law of descent and distribution. It is patent, therefore, that the guaranty in the bill of rights, and other provisions of the constitution, with respect to the right of acquiring and protecting property, does not include the mere privilege, right, or expectancy of inheritance." *Booth v. Commonwealth*, 130 Ky. 88, 113 S. W. 61.

The power of the legislature to tax is an inherent rather than a conferred power and the words "the legislative power" are a comprehensive phrase meaning all powers that appertain to or are usually exercised by a legislative body. The power to tax is incident to and arises from the legislative power with which the constitution clothed the general assembly; therefore the fact that the power to lay an inheritance tax is not expressly conferred in the sections of the constitution of Kentucky, 169 to 182, relating to revenue and taxation does not prevent the legislature from passing an inheritance tax. *Booth v. Commonwealth*, 130 Ky. 88, 113 S. W. 61.

The only case which questions the correctness of the doctrine that the imposition of an inheritance tax is authorized under our governmental system when not expressly forbidden by the state constitution is *Nunnemacher v. State*, 129 Wis. 190, 108 N. W. 627. See *Booth v. Commonwealth*, 130 Ky. 88, 113 S. W. 61.

### Uniform and Equal.—Nature of Tax.

An inheritance tax is not a tax on property within the provision of the constitution of Kentucky, section 171, which requires taxes on property to be uniform and equal. The Kentucky inheritance law of 1906 is not invalid as violating any provision of the state or federal constitution requiring uniformity or equality of taxation on account of discriminations between relations or between relations

and strangers. Kentucky constitution, section 171, requiring equality and uniformity in taxation applies to a direct tax on property, but the court holds that the provisions of the Kentucky statute of 1906 were not lacking in equality or uniformity because the tax is proportioned to the value of the interest or because of the exemption where the estate is of the value of five hundred dollars or less. *Booth v. Commonwealth*, 130 Ky. 88, 113 S. W. 61.

As the court decides that the Kentucky statute of 1906 does not violate the provision of the constitution with respect to uniformity of taxation, it does not decide whether or not the rule as to uniformity applies to a special or excise tax such as the statute of 1906. An inheritance tax is a special or excise tax. *Booth v. Commonwealth*, 130 Ky. 88, 113 S. W. 61, citing *State v. Switzler*, 143 Mo. 287, 45 S. W. 245, where the following language is used: "As already remarked; no doubt longer exists that it is competent for the legislature to levy a tax upon the succession of estates. It is quite universally held that such a tax is not a tax upon property, in the ordinary sense, but is in the nature of an excise or bonus, exacted by the state upon the privilege or right to inherit or succeed to an estate."

## THE PRESENT ACT.

### Taxable Transfers. — Rate.

S. 1. All property which shall pass, by will or by the intestate laws of this state, from any person who may die seized or possessed of the same while a resident of this state, or if such decedent was not a resident of this state at the time of death, which property, or any part thereof, shall be within this state, or any interest therein, or income therefrom, which shall be transferred by deed, grant, sale or gift, made in contemplation of the death of the grantor or bargainor, or intended to take effect in possession or enjoyment after such death, to any person or persons, or to any body politic or corporate, in trust or otherwise, or by reason whereof any person or body politic or corporate shall become beneficially entitled in possession or expectancy, to any property, or to the income thereof, other than to or for the use of his or her father, mother, husband, wife, lawful issue, the wife or widow of a son, or the husband of a daughter, or any child or children adopted as such in conformity with the laws of the commonwealth of Kentucky, and any lineal descendant of such decedent born in lawful wedlock, shall be, and is, subject to a tax of five dollars on every hundred dollars of the fair cash value of such property, and at a proportionate rate for any less amount, to be paid to the sheriff or collector of the proper county, as hereinafter defined for the general use of the commonwealth; and all administrators, executors and trustees shall be liable for any and all taxes until the same shall have been paid as hereinafter directed: Provided, that the first five hundred dollars of every estate shall not be subject to such duty or tax.

**"All Property."**

The property of a non-resident which is not physically present in the state is not taxable in Kentucky simply because the executor is a resident of Kentucky and he cannot be forced to file a list of such property for taxation. *Commonwealth v. Peebles*, 134 Ky 121, 119 S. W. 774.

**"By Will." — Where Will is Made in Pursuance of Contract.**

The testator devised all his property to his mother and entered into a written contract with her that in consideration of the devise she would leave by will one-half of the property she received to A. B. The testator died leaving his mother surviving and on her death she devised the property in accordance with her contract. The inheritance tax act was passed after the making of the contract by the mother and before her death, and the court holds that the property passing to A. B. is not subject to the tax. The court says that reading the will and contract together as they must be read, the mother took a life estate only and the obligation to leave by will to A. B. and that therefore A. B. really took under the will of the testator and not under that of the mother. The court relies on *Emmons v. Shaw*, 171 Mass. 410, 50 N. E. 1033, and *In re Lansing*, 182 N. Y. 238, 74 N. E. 882, in both of which cases the exercise of a power to appoint by will was referred to the original will, and no tax is levied where the statute was passed after the original will went into effect. *Winn v. Schenck*, 33 Ky. L. Rep. 615, 110 S. W. 827.

**"The First Five Hundred Dollars Shall Not be Subject to such Duty or Tax."**

This exemption does not render the statute void as lacking uniformity. This phrase refers to the estate passing by will to the collateral relative or stranger or under the statute of descent and distribution and not to the estate of the testator or decedent, and means that an estate passing by will to the collateral which is valued at five hundred dollars or less shall not be subject to the tax. The tax is upon the individual and can be imposed only when the particular interest in the decedent's estate passing to him exceeds five hundred dollars. *Booth v. Commonwealth*, 130 Ky. 88, 113 S. W. 61. (The collection officers had previously ruled otherwise and Ky. St. 1910, c. 36 was passed to allow refund of money paid in prior to this decision under the construction of the statute held by those officers.)

**Exemptions.**

The act of 1906 makes no exception in favor of charitable or religious institutions. *Leavell v. Arnold*, 131 Ky. 426, 115 S. W. 232. The Ky. St. 1906 is valid although its effect may be to tax property otherwise exempt from taxation, as a tax may be levied on a religious institution receiving a devise although its property is by law exempt from taxation. The court replies to this suggestion that the tax is not imposed upon the property but on the right of succession, and quotes *Plummer v. Coler*, 178 U.S. 115, 20 S.Ct. 829, 44 L. Ed. 998, *Wallace v. Myers* (C. C.), 38 Fed. 184, 4 L. R. A. 171, where state inheritance taxes upon legacies of United States bonds were sustained on that principle. *Booth v. Commonwealth*, 130 Ky. 88, 113 S. W. 61.

**Devise for Public School not Exempt.**

The tax is not levied upon the fund but upon its transmission, and hence the argument that it is against the policy of the law to levy a tax upon a fund devised for a public school has no bearing upon the case at bar, for the reason that this fund does not become a fund devoted to the maintenance of a school until the law relative to its transmission has been complied with. The tax must be paid before the fund in question can become the property of the school or be devoted to educational purposes. *Leavell v. Arnold*, 131 Ky. 426, 115 S. W. 232.

**Legacy to Debtor of Testator.**

The act of 1906 makes no exception in favor of legatees who may be indebted to the estate. *Leavell v. Arnold*, 131 Ky. 426, 115 S. W. 232.

**Particular Estates and Remainders.**

S. 2. When any grant, gift, devise, legacy or succession upon which a tax is imposed by section 1 of this article shall be an estate, income or interest for a term of years or for life, or determinable upon any future or contingent event, or shall be a remainder, reversion of other expectancy, real or personal, the entire property or fund by which such estate, income or interest is supported, or of which it is a part, shall be appraised immediately after the death of the decedent, and the fair cash value thereof, estimated at the price it would bring at a fair voluntary sale, determined in the manner provided in section 11 of this article and the tax prescribed shall be immediately due and payable to the sheriff or collector of the proper county, and, together with the interest thereon, shall be and remain a lien on said property until the same is paid: Provided, that the person or persons, or body politic or corporate, beneficially interested in the property chargeable with

said tax, may elect not to pay the same until they shall come into the actual possession or enjoyment of such property, and in that case such person or persons or body politic or corporate, shall execute a bond to the commonwealth of Kentucky, in a sum of twice the amount of the tax arising upon personal estate, with such sureties as the county court may approve, conditioned for the payment of said tax and interest thereon, at such time or period as they or their representatives may come into the actual possession or enjoyment of such property, which bond shall be filed in the office of the county clerk of the proper county: Provided, further, that such person shall make a full and verified return of such property to said court, and file the same in the office of the county clerk within one year of the death of the decedent, and within that period enter into such surety and renew the same every five years.

#### **Gifts to Executors or Trustees in Lieu of Commissions.**

S. 3. Whenever a decedent appoints or nominates one or more executors or trustees, and makes a bequest or devise of property to them in lieu of commissions or allowances, which otherwise would be liable to said tax, or appoints them his residuary legatees and said bequest, devises, or residuary legacies exceed what would be a lawful compensation for their services, such excess shall be liable to said tax, and the county court in which the personal representatives of the decedent has qualified shall fix the compensation.

#### **When Tax Accrues. — Interest. — Discount.**

S. 4. All taxes imposed by this chapter, unless otherwise herein provided for, shall be due and payable at the death of the decedent, and if the same are paid within eighteen months, no interest shall be charged and collected thereon, but if not so paid, interest at the rate of ten per centum per annum shall be charged and collected from the time said tax accrued: Provided, that if said tax is paid within nine months from the accruing thereof a discount of five per centum shall be allowed and deducted from said tax. And in all cases where the executors, administrators or trustees do not pay such tax within eighteen months from the death of the decedent, they shall be required to give a bond in the form and to the effect prescribed in section 2 of this chapter for the payment of said tax, together with interest.

The court construes sections 4281 *d, e, f, h* to mean that it was not intended that during the first eighteen months the executors should be harassed by suits to recover the tax or subjected to heavy penalties, but when eighteen months have run, unless the payment is further postponed by the execution of the bond provided for in sections 4281 *b* and 4281 *d*, or by the conditions described in section 4281 *e*, the tax must be paid and a failure to pay subjects the delinquent to a suit by a revenue agent and to the payment of the penalties allowed these agents under the general law. The administrator should have paid the tax within thirty days after distributing any part of the estate subject to the tax, and as he failed to pay the tax on that portion of the estate distributed after

more than thirty days, the county attorney had the authority to institute such proceedings as might be necessary to compel its payment although not entitled to any penalty. *Commonwealth v. Gaulbert*, 134 Ky. 157, 119 S. W. 779.

#### **Penalty.**

S. 5. The penalty of ten per centum per annum imposed by section 4 hereof, for the non-payment of said tax, shall not be charged in case where, by reason of claims made upon the estate, necessary litigation, or other unavoidable cause of delay, the estate of any decedent, or a part thereof, can not be settled at the end of eighteen months from the death of the decedent; and in such case only six per centum per annum shall be charged upon the said tax from the expiration of said eighteen months until the cause of such delay is removed.

#### **Tax to be Deducted.**

S. 6. Any administrator, executor or trustee having in charge or trust any legacy or property for distribution subject to the said tax, shall deduct the tax therefrom, or if the legacy or property be not money, he shall collect the tax thereon upon the fair cash value thereof, from the legatee or person entitled to such property, and he shall not deliver, or be compelled to deliver, any specific legacy or property subject to tax to any person until he shall have collected the tax thereon and whenever any such legacy shall be charged upon or payable out of real estate, the executor, administrator or trustee shall collect said tax from the distributee thereof, and the same shall remain a charge on such real estate until paid; if, however, such legacy be given in money to any person for a limited period, the executor, administrator or trustee shall retain the tax upon the whole amount; but if it be not in money, he shall make application to the county court to make an apportionment if the case require it, of the sum to be paid into his hands by such legatees, and for such further orders relative thereto as the case may require.

#### **Lien on Proceeds of Sale.**

Where a sale of real estate was made by the probate court to settle an estate it was claimed that the sales should not be confirmed as the state had a lien on the real estate for the inheritance tax. The court holds, however, that as the proceeds arising from the sale either are now in court or will be paid into court and will in any event be subject to the order of the court, the objection is without merit. The lien of the state is against the property of the decedent and will first be satisfied out of any personal estate left by him, and if this sum is not sufficient then the real estate may be subjected to the payment of this claim of the state, and the trial court can make such order with the entire estate under its control as is necessary to satisfy any claim of the state against the estate for taxes, inheritance or otherwise. *Mandel v. Fidelity Trust Co.* (Ky. 1908), 32 Ky. L. Rep. 1104, 107 S. W. 775.

**Power of Sale.**

S. 7. All executors, administrators and trustees shall have full power to sell so much of the property of the decedent as will enable them to pay said tax, in the same manner as they may be enabled by law to do for the payment of debts of the estate, and the amount of said tax shall be paid as hereinafter directed.

**Payment. — Receipts.**

S. 8. Every sum of money retained by an executor, administrator or trustee or paid into his hands, for any tax on property, shall be paid by him, within thirty days thereafter, to the sheriff or collector of the county in which the said tax is due and payable and the said sheriff or collector shall give and every executor, administrator or trustee shall take, duplicate receipts for such payment, one of which receipts said executor, administrator or trustee shall immediately send to the auditor of public accounts, whose duty it shall be to charge the said sheriff or collector so receiving the tax with the amount thereof, and said auditor shall seal said receipt with the seal of his office and countersign the same, and return it to the executor, administrator or trustee, whereupon it shall be a proper voucher in the settlement of his accounts; and an executor, administrator or trustee shall not be entitled to credits in his accounts, nor be discharged from liability for such tax, nor shall said estate be distributed unless he shall produce a receipt so sealed and countersigned by the auditor, or a copy thereof, certified by him.

**Refunding to Pay Debts.**

S. 9. Whenever any debts shall be proven against the estate of a decedent after the payment of legacies or distribution of property, from which the said tax has been deducted or upon which it has been paid, and a refund is made by the legatee, devisee, heir or next of kin, a proportion of the tax so deducted or paid shall be repaid to him by the executor, administrator or trustee, if the said tax has not been paid to the sheriff or collector or to the auditor or by the auditor if it has been so paid.

**Payment on Transfer.**

S. 10. Whenever any foreign executor or administrator shall assign or transfer any stocks or loans in this state standing in the name of a decedent, or held in trust for a decedent, which shall be liable to the said tax, such tax shall be paid to the sheriff or collector of the proper county on the transfer thereof; otherwise the corporation permitting such transfer shall become liable to pay such tax.

**Appraisal.**

S. 11. When the value of any inheritance, devise, bequest or other interest subject to the payment of said tax is uncertain, the county court in which the said tax settlement proceedings are pending, on the application of any interested party, or upon his own motion, shall appoint some competent person as appraiser, as often as and whenever occasion may require, whose duty it shall be forthwith to give such notice by mail to all persons known to have or claim an interest in such property, and to such persons as the court may by order direct, of the time and place at which he will appraise such property, and at such time and place to appraise the same and make a report thereof, in writing, to said court, together with such other facts in relation thereto as said court may by order require to be

filed with the clerk of said court; and from this report the said court shall, by order, forthwith assess and fix the fair cash value, as hereinbefore provided, of all inheritances, devises, bequests, or other interests and the tax to which the same is liable, and shall immediately cause notice hereof to be given, by mail, to all parties known to be interested therein; and the value of every future or contingent or limited estate, income or interest shall, for the purpose of this chapter, be determined by the rule, method and standards of mortality prescribed by the mortality tables authorized by Kentucky statutes for ascertaining the value of life estates, annuities and remainder interests save that the rate of interest to be assessed in computing the present value of all future interest and contingencies shall be five per centum per annum; and the insurance commissioner shall, on the application of said court, determine the value of such future or contingent or limited estate, income or interest, upon the facts contained in such report, and certify the same to the court, and his certificate shall be conclusive evidence that the method of computation adopted therein is correct. The said appraiser shall be paid by the personal representative of the decedent, out of any funds that may be or may come into his hands on account of said tax, on the certificate of the court, at the rate of three dollars per day for every day actually and necessarily employed in said appraisal, together with his actual and necessary traveling expenses.

This section should be read together with the general law as to filing of an appraisal and the court therefore finds that the appraisal required under the inheritance tax law with the names of the distributees or devisees should be filed within ninety days after qualification of the executor, and if the statement is not filed within this time the county court may upon its own motion or upon motion of any party interested in the estate take such proceeding as may be necessary to compel a statement to be filed, and after it has been filed to require if necessary that it shall be made sufficiently full and specific to furnish such information as will enable the county court to ascertain with reasonable certainty the character and value of the estate and the beneficiaries thereof, and this independent of the power conferred on the court by section 4281*k*. Under this section the court may upon its own motion or that of any interested party have an appraisal of the estate made at any time after the expiration of ninety days from the date of the death of the testator, or even before this time if it should appear necessary to secure the payment of the tax. *Commonwealth v. Gaulbert*, 134 Ky. 157, 119 S. W. 779.

#### **Misdemeanor of Appraiser.**

S. 12. Any appraiser appointed by virtue of this chapter who shall take any fee or reward from any executor, administrator, trustee, legatee, next of kin or heir of decedent, or from any other person liable to pay said tax, or any portion



thereof, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than two hundred dollars nor more than five hundred dollars, or imprisoned in the county jail sixty days, or both so fined and imprisoned, and in addition thereto the court shall dismiss him from such service.

#### **Jurisdiction of County Court.**

S. 13. The county court in the county in which is situated the real property of a decedent who was not a resident of the state, or in the county of which the decedent was a resident at the time of his death, shall have jurisdiction to hear and determine all questions in relation to the tax arising under the provisions of this chapter and the court first acquiring jurisdiction hereunder shall retain the same, to the exclusion of every other.

Sections 13, 14 and 15 confer jurisdiction on the county court to determine questions arising in relation to the tax, but this jurisdiction is not exclusive when the jurisdiction of the court of equity is invoked to distribute an estate, and the interest of each or any number of the heirs at law is subject to the inheritance or other tax. The court at the instance of the official representative of the commonwealth charged with the duty of collecting such tax may require its payment out of the share or shares of those chargeable with the tax before distributing the estate or funds among them, and thereby save both the tax collector and the heirs the trouble and expense of a separate and independent proceeding in the county court to compel the payment of the tax. The circuit court therefore, in requiring the payment of the tax before distribution, did not exceed its jurisdiction. *Barret v. Commonwealth*, 130 Ky. 109, 114 S. W. 750.

#### **Summons.**

S. 14. If it shall appear to the judge of the county court that any tax accruing under the provisions of this chapter has not been paid according to law, the clerk of said court shall issue a summons, summoning the persons known to own any interest in or part of the property liable to the tax to appear before the court on a day certain and show cause why said tax should not be paid. The service of said summons, and the time, manner and proof thereof, and the hearing and determination thereon, and the enforcement of the judgment or decree, shall conform to the provisions of the Kentucky statutes and the Civil Code of Practice applicable to and pursued in the levy, ascertainment and collection of taxes.

The jurisdiction of the county court is not exclusive but the tax may be collected on distribution in equity. *Barret v. Commonwealth*, 130 Ky. 109, 114 S. W. 750.

**Proceedings.**

S. 15. Whenever the sheriff or collector of any county shall have reason to believe that any tax is due and unpaid under the provisions of this chapter, after the failure or refusal of the persons interested in the property liable to said tax to pay the same, he shall notify the county attorney of the proper county, in writing, of such failure to pay such tax, and the county attorney so notified, if he have probable cause to believe a tax is due and unpaid, shall prosecute the proceedings in the county court, as provided in section 14 of this chapter, for the enforcement and collection of such tax.

The jurisdiction of the county court is not exclusive. See *ante*, p. 502.

The fact that a revenue agent was joined with the county attorney in a proceeding to collect an inheritance tax did not render the petition bad on demurrer, although a motion to strike the name of the revenue agent from the petition would have been proper. *Commonwealth v. Gaulbert*, 134 Ky. 157, 119 S. W. 779.

S. 16. The county clerk of each county shall, every six months, make a statement, in writing, to the sheriff or collector of the property from which, or the party from whom he has reason to believe a tax, under the provisions of this chapter, is due and unpaid.

S. 17. The county clerk of each county shall keep a book to be furnished by the auditor, in which he shall enter the values of inheritances, devises, bequests and other interests subject to the payment of such tax, and the tax assessed thereon, and the amounts of any receipts for payments thereon filed with him, which book shall be kept by him as public record.

S. 18. The sheriff or collector of each county shall collect and pay to the auditor all taxes that may be due and payable under this chapter, who shall give him the receipt therefor; of which collections and payment he shall make a report, under oath, to the auditor of public accounts at the same time and in the same manner as provided by law that he shall report and pay the state's revenue, stating for what estate paid, and in such form and containing such particulars as the auditor may prescribe; and for all such taxes collected by him and not paid to the auditor by the first day of March of each year he shall pay interest at the rate of ten per centum per annum.

S. 19. All acts and parts of acts in conflict with this act are hereby repealed except the act of 1904, approved March 24, 1904, which is chapter 104 of session acts 1904, fixing a tax of fifty cents on each barrel of blended or rectified whiskey, which act is not hereby repealed, but left in force as it now is. If any section in this bill shall be held to be unconstitutional, that fact shall not affect any other section of the act, it being the intention of the general assembly in enacting this bill to enact each section separately, and if any proviso or exception contained in any section of this bill shall be declared unconstitutional, that fact shall not affect the remaining portion of said section; it being the intention of the legislature to enact each section of said bill and each proviso and exception thereto separately.

thereof, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than two hundred dollars nor more than five hundred dollars, or imprisoned in the county jail sixty days, or both so fined and imprisoned, and in addition thereto the court shall dismiss him from such service.

#### **Jurisdiction of County Court.**

S. 13. The county court in the county in which is situated the real property of a decedent who was not a resident of the state, or in the county of which the decedent was a resident at the time of his death, shall have jurisdiction to hear and determine all questions in relation to the tax arising under the provisions of this chapter and the court first acquiring jurisdiction hereunder shall retain the same, to the exclusion of every other.

Sections 13, 14 and 15 confer jurisdiction on the county court to determine questions arising in relation to the tax, but this jurisdiction is not exclusive when the jurisdiction of the court of equity is invoked to distribute an estate, and the interest of each or any number of the heirs at law is subject to the inheritance or other tax. The court at the instance of the official representative of the commonwealth charged with the duty of collecting such tax may require its payment out of the share or shares of those chargeable with the tax before distributing the estate or funds among them, and thereby save both the tax collector and the heirs the trouble and expense of a separate and independent proceeding in the county court to compel the payment of the tax. The circuit court therefore, in requiring the payment of the tax before distribution, did not exceed its jurisdiction. *Barret v. Commonwealth*, 130 Ky. 109, 114 S. W. 750.

#### **Summons.**

S. 14. If it shall appear to the judge of the county court that any tax accruing under the provisions of this chapter has not been paid according to law, the clerk of said court shall issue a summons, summoning the persons known to own any interest in or part of the property liable to the tax to appear before the court on a day certain and show cause why said tax should not be paid. The service of said summons, and the time, manner and proof thereof, and the hearing and determination thereon, and the enforcement of the judgment or decree, shall conform to the provisions of the Kentucky statutes and the Civil Code of Practice applicable to and pursued in the levy, ascertainment and collection of taxes.

The jurisdiction of the county court is not exclusive but the tax may be collected on distribution in equity. *Barret v. Commonwealth*, 130 Ky. 109, 114 S. W. 750.

**Proceedings.**

S. 15. Whenever the sheriff or collector of any county shall have reason to believe that any tax is due and unpaid under the provisions of this chapter, after the failure or refusal of the persons interested in the property liable to said tax to pay the same, he shall notify the county attorney of the proper county, in writing, of such failure to pay such tax, and the county attorney so notified, if he have probable cause to believe a tax is due and unpaid, shall prosecute the proceedings in the county court, as provided in section 14 of this chapter, for the enforcement and collection of such tax.

The jurisdiction of the county court is not exclusive. See *ante*, p. 502.

The fact that a revenue agent was joined with the county attorney in a proceeding to collect an inheritance tax did not render the petition bad on demurrer, although a motion to strike the name of the revenue agent from the petition would have been proper. *Commonwealth v. Gaulbert*, 134 Ky. 157, 119 S. W. 779.

S. 16. The county clerk of each county shall, every six months, make a statement, in writing, to the sheriff or collector of the property from which, or the party from whom he has reason to believe a tax, under the provisions of this chapter, is due and unpaid.

S. 17. The county clerk of each county shall keep a book to be furnished by the auditor, in which he shall enter the values of inheritances, devises, bequests and other interests subject to the payment of such tax, and the tax assessed thereon, and the amounts of any receipts for payments thereon filed with him, which book shall be kept by him as public record.

S. 18. The sheriff or collector of each county shall collect and pay to the auditor all taxes that may be due and payable under this chapter, who shall give him the receipt therefor; of which collections and payment he shall make a report, under oath, to the auditor of public accounts at the same time and in the same manner as provided by law that he shall report and pay the state's revenue, stating for what estate paid, and in such form and containing such particulars as the auditor may prescribe; and for all such taxes collected by him and not paid to the auditor by the first day of March of each year he shall pay interest at the rate of ten per centum per annum.

S. 19. All acts and parts of acts in conflict with this act are hereby repealed except the act of 1904, approved March 24, 1904, which is chapter 104 of session acts 1904, fixing a tax of fifty cents on each barrel of blended or rectified whiskey, which act is not hereby repealed, but left in force as it now is. If any section in this bill shall be held to be unconstitutional, that fact shall not affect any other section of the act, it being the intention of the general assembly in enacting this bill to enact each section separately, and if any proviso or exception contained in any section of this bill shall be declared unconstitutional, that fact shall not affect the remaining portion of said section; it being the intention of the legislature to enact each section of said bill and each proviso and exception thereto separately.

## LOUISIANA.

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### In General.

Four states, California, Louisiana, Iowa and Washington, have at some time discriminated severely against non-resident aliens. Such tax has been repealed in California and Washington, the attempt to revive it in Louisiana has been found invalid, and it still stands only in Iowa.

Louisiana was the second state to tax inheritances. This was in the form of a tax of 10 per cent imposed on estates passing to non-resident aliens, which was enacted in 1828, repealed in 1830 and re-enacted in 1842. This remained in force until 1877 when it was repealed and an attempt to revive it in 1894 was declared invalid by the court.

The constitution of 1898 authorizes a direct inheritance tax and provides that the "tax shall not be enforced when the property donated or inherited shall have borne its just proportion of taxes prior to the time of such donation or inheritance." It is a common argument in defence of an inheritance tax that it reaches much property that has escaped taxation during the owner's lifetime, without considering that it equally reaches property that has not escaped. Louisiana by exempting property that has borne its proper burden is the only state in the country that is honest in this respect.

The present law was adopted in 1904 and modified in 1906. The exemption applies to the individual shares, not to the estate as a whole.

We are informed that Louisiana is taxing stock of a Louisiana corporation owned by a non-resident. The statute provides that no bank having money or securities shall turn them over, and no corporation, the stock or registered bonds of which are owned by the deceased, shall deliver or transfer the same to any heir until the tax is paid. Louisiana is not included, however, in the Connecticut list of states that are taxing stock or bonds owned by non-residents. This tax has been producing from \$100,000 to \$200,000 a year.

### List of Statutes.

1828. Statutes of Louisiana, No. 95, ss. 1 to 2.  
 1830. " " " March 15, s. 1.  
 1842. " " " c. 154, p. 434.  
 1855. " " " c. 315, p. 398.  
 1877. " " " c. 47, p. 60.  
 1877. " " " c. 86 (extra session).  
 1877. " " " c. 86, p. 125 (extra session).  
 1888. " " " c. 109, p. 173.  
 1894. " " " c. 130.  
 1904. " " " c. 45, p. 102.  
 1906. " " " c. 145, p. 249.  
 1906. " " " c. 109, p. 173.  
 1856. Revised Statutes of Louisiana, p. 220, s. 113.  
 1856. " " " " p. 9, s. 13.  
 1856. " " " " p. 541, s. 7.  
 1870. " " " " p. 715, ss. 3683 to 3684.  
 1870. " " " " p. 288, s. 1470.  
 1870. " " " " p. 648, s. 3345.  
 Revised Civil Code 1870, arts. 1221 to 1223.  
 1876. Revised Statutes of Louisiana, p. 853 (1876 Voorhies), s. 3345.  
 1898. Constitution of Louisiana, arts. 235 to 236.  
 1904. Constitution and Revised Laws of Louisiana (Wolff), Vol. 2, arts. 235 to 236, p. 1974.  
 1897. Revised Laws of Louisiana (Wolff), ss. 13, 1113, 1470, 3683.  
 1900. Merrick's Revised Civil Code of Louisiana, Vol. 1, c. 9, arts. 1221, 1222 and 1223.

## I.

### THE ALIEN TAX.

#### History of Alien Tax.

La. St. 1828, c. 95, was repealed in 1830 and re-enacted in 1842. La. St. 1842 was revised and reproduced by La. St. 1855. In 1870 the civil code was revised and the provisions in the act of 1842 were incorporated therein as articles 1221, 1222, 1223. They continued without alteration until 1877 when these articles were expressly repealed and so remained until 1894 when the legislature revived them and re-enacted them in terms and without change in phraseology. The act of 1894 was, however, subsequently declared invalid, in *Succession of Rixner*, 48 La. Ann. 552, 19 S. 597, 32 L. R. A. 177.

#### The Alien Tax Statute of 1828 and its Repeal in 1830.

La. St. 1828, c. 95. Approved March 25, 1828.

S. 1. Be it enacted by the Senate and House of Representatives of the State of Louisiana, in General Assembly convened, that any person who is not a citizen

of the United States, or is not domiciliated in any part of the said states, shall be subject to pay to this state ten per cent on all sums which may be due to him as an heir, legatee or donee by any succession which may be opened in this state: And that, therefore, all administrators of the said succession and their securities, under whatever title they may administer the same, shall be bound under this responsibility, to retain in their hands ten per cent on all the sums which may accrue to any person of the above description, as an heir, legatee or donee, in the successions by them administered, and to pay over the same, to wit: to the state treasurer, with respect to the successions which may be opened in the parish of Orleans and to the judge of the court of probates of the parish where the succession may be opened, with respect to the other parishes of the state, and when the said legacy, inheritance or donation shall be or consist of specific property, the same shall be taken at the appraised value, as made in the inventory of the succession from which the same shall come.

[La. St. 1828, c. 95, s. 2, provides for the payment of the inheritance tax by the parish judges to the state treasurer.]

This statute is constitutional and if it be in diminution of the right of aliens to transmit their property by will or descent, that right established by law is susceptible of being curtailed by later laws. *Arnaud v. Arnaud*, 3 La. 336.

La. St. 1830, p. 76, approved March 15, 1830, repeals the statute of March 25, 1828, entitled An Act relative to the revenue of the state, etc., and amends section 2 of the statute of 1828 as to the duties of judges in regard to the payment of tax.

The tax was held properly charged upon the estate of one who died while the act of 1830 was in force. Whatever may be the effect of the repeal of a law in criminal matters it leaves all civil rights acquired under the law unaffected. A tax cannot be assimilated to a forfeiture which presupposes an offence. *Arnaud v. Arnaud*, 3 La. 336.

The tax under the statute of 1828 is due on the estate of a decedent who died before the repeal of the tax in 1830, as the rights acquired by the state to the tax are not divested by the repealing act. *Quessart v. Canonge*, 3 La. 560.

### The Alien Tax Statute of 1842.

La. St. 1842, c. 154, s. 4, p. 434. Approved March 26, 1842.

Be it further enacted, etc., that each and every person, not being domiciliated in this state, and not being a citizen of any state or territory in the union, who shall be entitled, whether as heir, legatee or donee, to the whole or any part of the succession of a person deceased, whether such person shall have died in this state or elsewhere, shall pay a tax of ten per cent on all sums, or on the value of all property which he may actually receive from said succession, or so much thereof as is situated in this state, after deducting debts due by said successions. When the said inheritance, donation or legacy consists of specific property, and

the same has not been sold, the appraisement thereof in the inventory shall be considered as the value thereof. Every executor, curator, tutor or administrator having the charge or administration of succession property belonging, in whole or in part, to a person residing out of this state, and not being a citizen of any other state or territory, shall be bound to retain in his hands the amount of the tax imposed by this act, and to pay over the same to the state treasurer, if the succession be opened in the parish of Orleans or Jefferson, or to the sheriff if the succession be opened in any other parish, in default whereof every such executor, curator, tutor or administrator, and his securities, shall be liable for the amount thereof. It shall be the special duty of the judges of the courts of probate to see that the tax imposed by virtue of this section be collected and paid over, and each of said judges shall be bound to furnish to the treasurer, once a year, a statement or list of the successions opened in his parish whereof persons who are neither residents of this state or citizens of any other state or territory in the union are heirs, legatees or donees, in whole or in part, and of the amount accruing to such persons; and any judge failing to furnish such statement shall be subject to a fine not exceeding five hundred dollars for each and every such omission; and that he be responsible to the state for the amount due; and that the sheriffs of the different parishes throughout the state, except those of the parishes of Orleans and Jefferson, shall pay over the taxes thus received from successions in the same manner, and be subject to the same penalties as in the payment of other taxes; and that the taxes thus received be taken in view in the execution of the sheriff's bond.

### Not Retroactive.

This statute does not apply to successions opened before its enactment. *Succession of Deyraud*, 9 Rob. (La.) 357, relying on *Succession of Oyon*, 6 Rob. (La.) 504. The court remarks that the legislature might impose a tax on all sums to be paid over to the aliens without reference to the opening of the succession from which they may be entitled to receive such sums, but unless that intention is clearly and unequivocally expressed we are bound to suppose that according to the ordinary rules of legislation they intended to provide for the future and not to affect in any way the rights previously acquired. *Succession of Oyon*, 6 Rob. (La.) 504.

### Validity.

"Now the law in question is nothing more than an exercise of the power which every state and sovereignty possesses, of regulating the manner and terms upon which property real or personal within its dominion may be transmitted by last will and testament, or by inheritance; and of prescribing who shall and who shall not be capable of taking it. Every state or nation may unquestionably refuse to allow an alien to take either real or personal property, situated within its limits, either as heir or legatee, and may, if it thinks proper, direct that property so descending or bequeathed shall belong to the state. In many of the states of this union at this day, real property devised to an alien is liable to escheat. And if a state may deny the privilege altogether, it follows that, when it grants it, it may annex to the grant any conditions which it supposes to be required by its



interests or policy. This has been done by Louisiana. The right to take is given to the alien, subject to a deduction of ten per cent for the use of the state.

"In some of the states, laws have been passed at different times, imposing a tax similar to the one now in question, upon its own citizens as well as foreigners; and the constitutionality of these laws has never been questioned. And if a state may impose it upon its own citizens, it will hardly be contended that aliens are entitled to exemption; and that their property in our own country is not liable to the same burdens that may lawfully be imposed upon that of our own citizens.

"We can see no objection to such a tax, whether imposed on citizens and aliens alike, or upon the latter exclusively. It certainly has no concern with commerce, or with imports or exports. It has been suggested, indeed in the argument, that as the legatee resided abroad, it would be necessary to transmit to her the proceeds of the portion of the estate to which she was entitled, and that the law was therefore a tax on exports. But if that argument was sound, no property would be liable to be taxed in a state, when the owner intended to convert it into money and send it abroad." *Per* Taney, C. J., in *Mager v. Grima*, 8 How. 490.

The court holds that the Louisiana inheritance tax on non-residents and aliens is not obnoxious to the constitution of 1845. To be uniform, taxation need not be universal. Certain objects may be made its subject and others may be exempted from its operation, certain occupations may be taxed and others not; so some occupations may be taxed for a greater amount and others for a less, but as between the subjects of taxation in the same class, there must be an equality. The object subjected to taxation in the present case is a succession within the state falling to alien heirs who are non-residents. By the terms of the act, the tax is equal and uniform, the rate of the tax and the description of property subject to it being the same throughout the state. *State v. Poydras*, 9 La. Ann. 165, 167.

The Louisiana inheritance law on non-residents has been upheld since 1845 in the following cases: *State v. Martin*, 2 La. Ann. 667; *Succession of George*, 4 La. Ann. 223; *Succession of Pehan*, 5 La. Ann. 304.

### **To whom Applicable.**

It was contended that the act of 1842 must be construed according to its own terms, and that the discrepancy between its language excepting those who are not citizens of any state in the union and the La. St. 1850 which excepts only those who are not citizens of any other state or territory means that heirs who are citizens of the United States and heirs who are domiciled in Louisiana are exempt from taxes. The court, however, by reference to the French version of the statute and the original exemplification finds that the word "other" has been inadvertently omitted in the English

text and from this view of the statute the court concludes that the tax attaches not only to property falling to alien heirs who are non-residents but also to property falling to citizens of Louisiana residing abroad. The only exceptions to non-resident heirs are citizens of any other state or territory of the United States than the state of Louisiana. This exemption was probably intended to satisfy the second section of the fourth article of the constitution of the United States. The object of the law was not only to increase the revenues of the state but to discourage absenteeism. *State v. Poydras*, 9 La. Ann. 165.

### Effect of Federal Treaties.

This act was abrogated by a treaty between the United States and France dated February 23, 1853, as to French citizens taking under successions in Louisiana. *Succession of Dufour*, 10 La. Ann. 391.

The treaty of 1853 between England and France stipulated that it should remain in force for the space of ten years from the day of the exchange of the ratifications. The court holds that therefore it did not go into effect until the ratifications were exchanged, which occurred August 11, 1853, and therefore the succession of a testator who died July 22, 1853, was not affected by it. *Succession of Schaffer*, 13 La. Ann. 113.

The validity of an inheritance tax levied under the laws of Louisiana upon the estate of one who died in 1848 is not affected by a treaty between the United States and France ratified in 1853, providing that Frenchmen shall in no case be subject to taxes on transfers or inheritances different from those paid by the citizens of the United States. The court holds that the tax vested in the state at the death of testator and that the property vested in the petitioner at that time as heir, and that therefore the treaty had no effect upon it. *Prevost v. Greneaux*, 19 How. 1, affirming *Succession of Prevost*, 12 La. Ann. 577.

Where the heirs of the decedent are subjects of Bavaria the court holds that the treaty between the United States and Bavaria of 1845 (U. S. Sts. at Large, Vol. 9, p. 26), prevents the subjects of Bavaria from being liable to an inheritance tax. *Succession of Crusius*, 19 La. Ann. 369.

The court follows the *Dufour* case, 10 La. Ann. 391, and *Succession of Prevost*, 12 La. Ann. 577, and holds that the French treaty of 1853 prevents the imposition of the Louisiana alien tax. *State v. Circe*, Man. Unreported Cases (La.) 412.

A treaty between the United States and the King of Wurtemberg, dated April 10, 1844, provided that citizens of each country should have a right to take as heirs, paying such duties only as the inhabitants of the country where the property lies. The court holds that the Louisiana statute does not make any discrimination between citizens of the state and aliens in the same circumstances as a citizen of Louisiana domiciled abroad is subject to the tax. Furthermore, the case of a citizen or subject of the respective countries residing at home and disposing of property there in favor of a citizen or subject of the other was not in contemplation of the treaty. So the tax should be collected on the estate of a citizen of Louisiana leaving property to a citizen of Wurtemberg. *Frederickson v. State*, 23 How. (U. S.) 445.

### **The Statute of 1850.**

La. St. 1850, No. 194, p. 146, imposes the duty on executors or administrators having charge of succession property belonging in whole or in part to a person residing out of this state and not being a citizen of any other state to retain in his hands the amount of the tax imposed by law and pay over the same to the state treasurer, in default whereof every such executor shall be liable for the amount of the tax.

### **The Statute of 1855.**

La. St. 1855, c. 315, s. 7, p. 399. Approved March 15, 1855.

Be it further enacted, etc., that each and every person not being domiciliated in this state and not being a citizen of any state or territory in the union, who shall be entitled, whether as heir, legatee or donee, to the whole or any part of the succession of a person deceased, whether such person shall have died in this state or elsewhere, shall pay a tax of ten per cent on all sums or on the value of all property which he may have actually received from said succession, or so much thereof as is situated in this state after deducting all debts due by said succession; when the inheritance, donation or legacy consists of specific property and the same has not been sold, the appraisalment thereof in the inventory shall be considered as the value thereof. Every executor, curator, tutor or administrator having the charge or administration of succession property belonging in whole or in part to a person residing out of this state, and being a citizen of any other state or territory, shall be bound to retain in his hands the amount of the tax imposed, and to pay over the same to the state treasurer, or to the officer appointed by him; in default whereof every such executor, curator, tutor or administrator, and his securities shall be liable for the amount thereof.

This tax is not a debt of the succession, it is simply a debt of the heir who happens to be domiciled in a foreign country, and therefore

a suit to recover this tax should be brought directly against the heirs who under the statute owe it to the state, and the court does not decide the effect of the French treaty on this statute. *Succession of Pargoud*, 13 La. Ann. 367.

### **Repeal of the Alien Tax Act.**

La. St. 1877, c. 47, approved March 10, 1877, amended Louisiana Revised Statutes 1870, section 313, to read as follows:—

"Whenever any person, permanently residing without the state, shall die, being the owner of any bank stock, railroad stock, insurance or other stock, in any bank or incorporated companies of this state, or in any national banking association, located in this state, except the property banks, no state tax prescribed in cases of succession shall be applicable to such stock."

La. St. 1877, c. 86 (extra session), p. 125, approved April 20, 1877, repealed Louisiana Revised Civil Code, articles 1221, 1222 and 1223, and the Louisiana Revised Statutes of 1870, sections 2683, 2684, "provided that the repeal of said articles of the civil code and sections of the Revised Statutes shall not affect the right of the state to collect said tax in successions already opened."

La. St. 1888, c. 109, p. 173, approved July 12, 1888, amended La. St. 1877, c. 47, of the regular session by omitting any reference to succession taxes.

### **The Invalid Alien Statute of 1894.**

La. St. 1894, c. 130, approved July 11, 1894, amends and re-enacts Louisiana Civil Code, articles 1221, 1222, 1223, imposing a tax on foreign heirs, legatees and donees. The articles as re-enacted are as follows:—

A. 1221. Each and every person, not being domiciliated in this state, and not being a citizen of any state or territory in the union, who shall be entitled, whether as heir, legatee, or donee, to the whole or any part of the succession of a person deceased, whether such person shall have died in this state, or elsewhere, shall pay a tax for the benefit of the Charity Hospital in New Orleans of ten per cent on all sums on the value of all property which he may have actually received from said succession, or so much thereof as is situated in this state, after deducting all debts due by said succession; when the inheritance, donation or legacy consists of specific property and the same has not been sold, the appraisalment thereof in the inventory shall be considered the value thereof.

A. 1222. Every executor, curator, tutor or administrator having the charge or administration of succession property belonging in whole or in part to a person residing out of the state, and not being a citizen of any other state or territory, shall be bound to retain in his hands the amount of the tax imposed, and to pay

over the same to the treasurer of said hospital; in default whereof every such executor, curator, tutor or administrator and his securities shall be liable for the amount thereof.

A. 1223. It shall be the special duty of clerks of courts to see that the tax imposed by the preceding section be collected and paid over; and each of such clerks shall be bound to furnish the auditor and the treasurer of said hospital once in a year, a statement or list of the successions opened in his parish, whereof persons who are neither residents of this state nor citizens of any other state, or territory in the United States, are heirs, legatees or donees, in whole or in part, and of the amount accruing to such persons, and any clerk failing to furnish such statement or to comply with the provisions of the laws relative to vacant successions shall be responsible to the state for the amount due.

### **Invalid as Revenue Legislation Introduced in the Senate.**

The act of 1894 was attacked as being in conflict with article 35 of the constitution which requires that all bills for raising a revenue and appropriating money shall originate in the house of representatives. The statute did originate in the senate and it was denied that the act was one raising revenues or appropriating money. It was claimed that the statute is a legal limitation upon the right of inheritance; that it simply fixes as a necessary condition for the existence of a capacity to receive by succession the payment of a certain sum. The court holds that the statute does not make the payment of the tax a condition precedent to a right of inheritance but that the law permits a foreigner to inherit and having so inherited charges him with the payment of the tax, and that as such the legislation is revenue legislation. The beneficiary of the fund to be raised from foreign heirs and legatees is the charity hospital, a public institution of the state. The statute was held unconstitutional. *Succession of Sala* (1898), 50 La. Ann. 1009, 24 S. 674. *Succession of Givanovich*, 50 La. Ann. 625, 24 S. 679.

### **Federal Treaties.**

Where the testator, a citizen of Italy, died in Louisiana and left an heir in Italy, the court holds that he was exempt from this tax under the treaty between the United States and Italy of 1871; that the situation of the litigants is identical with that of the litigants in the Dufour case of the earlier statute, the heir having invoked the benefit "of the most favored nation" in the Italian treaty with the United States. *Succession of Rixner*, 48 La. Ann. 552, 19 S. 597, 32 L. R. A. 177.

The court remarks that the Louisiana statute of 1894, act No. 130, follows the language of the repealed articles of the Revised Civil

Code very closely, as said in the *Succession of Rixner*, 48 La. Ann. 558, 19 S. 597. It must have the same interpretation as was placed on the law in force from 1842 to 1877.

The treaty between France and the United States of August 12, 1853, provides in article 7: "In all the states of the union whose existing laws permit it, so long and to the same extent as the said laws shall remain in force, Frenchmen shall have the right of possessing personal and real property by the same title and in the same manner as the citizens of the United States. They shall be free to dispose of it as they please, either gratuitously or for value received, by donation, testament or otherwise, just as those citizens themselves; and in no case shall they be subjected to taxes on transfer, inheritance or any others different from those paid by the latter or to taxes which shall not be equally imposed."

The charity hospital of the city of New Orleans claimed to be entitled to 10 per cent on all sums and property to which the heirs and legatees not domiciled in the state of Louisiana would be entitled under the statute of 1894, act No. 130.

The court denies this claim and says that the statute of 1894 left the right of Frenchmen to inherit as absolute and untrammelled as it was before the passage of the statute. What the statute attempted to do was not to make the right of inheritance contingent upon the payment of the tax, but to make the payment of the tax follow and result from the vesting of the title to the property.

The court says that the legislature may have the right to prohibit Frenchmen from possessing and owning personal and real property as may citizens of the United States; but if it has such right it has not as yet exercised it, but has permitted them to stand in that respect on the same plane as citizens of Louisiana. Occupying that status the treaty provisions declare that in no case shall they be subjected to tax on transfer, inheritance or any other condition from those paid by the citizens of Louisiana or to tax which shall not be equally imposed. *Succession of Rabasse*, 49 La. Ann. 1405, 22 So. 767, 772.

The treaty of 1795 between the United States and Spain provides that the citizens and subjects of each party shall have power to dispose of their "personal goods" within the jurisdiction of the other, and their representatives being subjects of the other party shall succeed to their said personal goods and dispose of the same at their will, paying such dues only as the inhabitants of the country wherein the goods are shall be subject to pay in like cases.

The court finds that the words "personal goods" include movable property only and not real estate or immovable property. The word "inhabitants" was intended to have as broad a signification as would be needed to insure to the citizens of each country full protection which it was intended to secure. The general assembly did not have in view the imposition of a succession tax upon the citizens of Louisiana living away from the state. The treaty would have no effect if the Louisiana statute was extended to Spanish heirs or legatees living in their own country.

The act of 1894 was not, however, aimed at any portion of the people of Louisiana and therefore Spanish heirs and legatees have the same rights that they do to exemption. *Succession of Sala*, 50 La. Ann. 1009, 24 S. 674.

## II.

### THE GENERAL SUCCESSION TAX.

#### Constitutional Limitations.

##### **Louisiana Constitution 1845, a. 127.**

Taxation shall be equal and uniform throughout the state. After the year 1848 all property, on which taxes may be levied, in this state, shall be taxed in proportion to its value, to be ascertained as directed by law. No one species of property shall be taxed higher than another species of property of equal value, on which taxes shall be levied; the legislature shall have the power to levy an income tax, and to tax all persons pursuing any occupation, trade or profession.

##### **Louisiana Constitution 1898. Adopted May 12, 1898.**

A. 235. The legislature shall have power to levy, solely for the support of the public schools, a tax upon all inheritances, legacies and donations; provided, no direct inheritance or donation to an ascendant or descendant, below ten thousand dollars in amount or value, shall be so taxed; provided, further, that no such tax shall exceed three per cent for direct inheritances and donations to ascendants or descendants, and ten per cent for collateral inheritances, and donations to collaterals or strangers; provided, bequests to educational, religious or charitable institutions shall be exempt from this tax.

A. 236. The tax provided for in the preceding article shall not be enforced when the property donated or inherited shall have borne its just proportion of taxes prior to the time of such donation or inheritance.

#### **Not Applicable to Taxes Levied before the Constitution went into Effect.**

The court holds that this section and the provisions of the Louisiana statutes carrying these articles of the constitution into

effect do not extend or reach back to conditions anterior to the constitution itself; that where taxes due in 1878 and 1883 on certain lands had not been paid the collector urged that it made no difference how far back in the past the failure to pay taxes may have occurred nor who the owners of the lot may have been at that time; but the court holds that taxes due before the passage of the constitution do not affect the question of inheritance tax. *Succession of Westfeldt*, 122 La. Ann. 836, 48 S. 281.

### **Nature of Succession Tax.**

The court follows the ruling in *Succession of Sala*, 50 La. Ann. 1009, 24 S. 674, and holds that a succession tax is a bill for the purpose of raising revenue and must, within the Louisiana constitution, originate in the house of representatives. *Succession of Givanovich*, 50 La. Ann. 625, 24 S. 679.

The exemption in La. Const. 1898 from the operation of the inheritance tax, of property which had borne its just share of taxation, arose from a misapprehension of the inheritance tax which is not a tax proper but a bonus or premium exacted by the sovereign on the transmission of an estate, the amount being measured by the value of the property. In its very nature it is a privilege or franchise tax and is not affected by the nature and character of the property transmitted. *Succession of Kohn*, 115 La. Ann. 71, 38 S. 898.

### **Non-Taxable Property not Exempt.**

As an inheritance tax is not one on property but upon its transmission by will or by descent, it does not matter whether the property of an estate is taxable or not, or has or has not been taxed.

If the law-maker had intended to include property exempt from taxation he would have said so. Non-taxable bonds cannot be said to have borne their just proportion of taxation as they are exempt from such a burden. The law-maker evidently referred to property subject to assessment and taxation on which taxes had been paid prior to the time of the devolution of the inheritance. Exemption from taxation is strictly construed and cannot be read into a statute by inference or implication; therefore state and municipal bonds exempt from taxation are subject to the inheritance tax. The court relies on *Plummer v. Coler*, 178 U. S. 115, 20 S. Ct. 829, 44 L. Ed. 998. *Succession of Kohn*, 115 La. Ann. 71, 38 S. 898.



## THE GENERAL SUCCESSION STATUTE OF 1904.

La. St. 1904, c. 45, p. 102.

"AN ACT TO CARRY INTO EFFECT ARTICLES 235 and 236 of the Constitution of 1898 relative to inheritance taxes."

### Purpose.

This act was passed to carry into effect articles 235 and 236 of the Louisiana constitution of 1898, relative to inheritance taxes. *Succession of Kohn*, 115 La. Ann. 71, 38 S. 898.

### Title Sufficient.

The court holds that the title sufficiently suggests the object of the act and is therefore not void under La. Const., article 31. *Succession of Levy*, 115 La. 377, 39 S. 37, affirmed *Cahen v. Brewster*, 203 U. S. 552, 27 S. Ct. 174, 51 L. Ed. 310.

S. 1. Be it enacted by the General Assembly of the State of Louisiana: That there is now and shall hereafter be levied, solely for the support of the public schools, a tax upon all inheritances, legacies and donations, provided no direct inheritance, or donation, to an ascendant or descendant, below ten thousand dollars in amount or value shall be so taxed; a special inheritance tax of three per cent on direct inheritances and donations to ascendants or descendants and ten per cent for collateral inheritances and donations to collaterals or strangers; provided bequests to educational, religious or charitable institutions shall be exempt from this tax and provided further that this tax shall not be enforced when the property donated or inherited shall have borne its just proportion of taxes prior to the time of such donation or inheritance; this tax to be collected on all successions not finally closed and administered upon and on all successions hereafter opened.

### Retroactive.

La. St. 1904 became operative in New Orleans July 30, 1904, and the court holds that it embraced all successions, those opened and not settled as well as to be opened, and that it is not void as retroactive on that ground. The court holds that the power to tax is without limit in its force and in the extent of its search; that the legatees acquire no vested right in the property bequeathed which could enable them to successfully defend their inheritance against the demand of the state. It was property within the limits of the state which the state could tax for the purposes mentioned until it passed out of the succession of the testator.

The court notes that it does not appear just to tax all successions

opened since the statute went into effect and not yet closed and not tax those that have been opened and closed in that time. The court replies that it would be utterly impracticable to tax successions that have been closed for the reason that there is no succession remaining. The tax is not a tax upon the property itself but upon its transmission. It is a tax upon the right to dispose of property and as long as a succession, the ideal or juridical person, remains in the hands of the executors, the legislative power may classify it and subject it to a tax. *Succession of Levy*, 115 La. 378, 39 S. 37, affirmed *Cahen v. Brewster*, 203 U. S. 552, 27 S. Ct. 174, 51 L. Ed. 310.

The court says that there is nothing in the cases of *United States v. Perkins*, 163 U. S. 625, *Magoun v. Illinois Trust & Savings Bank*, 170 U. S. 283; *Knowlton v. Moore*, 178 U. S. 41, which restrains the power of the state as to the time of the imposition of the tax. "It may select the moment of death, or it may exercise its power during any of the time it holds the property from the legatee."

Where the testator died in May, 1904, before the statute went into effect the statute properly was made to impose the tax upon the estate.

La. St. 1904, c. 45, provided that the inheritance tax might be collected "on all successions not finally closed and administered upon." It was argued that the closing of the succession cannot affect the question as to when the rights of the heirs vested and cannot be the cause for differentiation among the heirs and such a classification is purely arbitrary. Besides, such a classification rests on the theory that the tax is one of property, when in fact it is one on the right of inheritance. But the court holds that the property bequeathed was subject to the jurisdiction of the court until it had passed out of the succession of the testator, and it was not improper classification to make the tax depend upon a fact without which it would have been invalid. "In other words, those who are subject to be taxed cannot complain that they are denied the equal protection of the laws because those who cannot legally be taxed are not taxed." *Cahen v. Brewster*, 203 U. S. 543, 552, 27 S. Ct. 174, 51 L. Ed. 310, affirming 115 La. 378, 39 S. 37.

Where the testator died in 1903 and his property was in large part distributed before the passage of La. St. 1904 the tax is not operative as to such property, as the statutes should not be construed as retroactive when impairing vested rights. *Succession of Stauffer*, 119 La. Ann. 66, 43 S. 928.

**Value Based on Share of Each Heir.**

It was admitted that the liability for tax is determined by the amount falling to each of the heirs and not by the aggregate amount falling to all of them. *Succession of Abadie*, 118 La. Ann. 708, 43 S. 306.

**Usufruct Not Taxable.**

Under Louisiana statutes the surviving spouse takes the usufruct of a community property under the marriage contract and not merely by inheritance on the death of the decedent, and therefore the right of usufruct in such case is not subject to the inheritance tax law of 1904. *Succession of Marsal*, 118 La. Ann. 212, 42 S. 778.

**What Property Taxable. — Debts Excepted.**

Under La. St. 1904 the legatees should pay the inheritance tax upon the amount of all property, upon its securities, monies, jewelry, bills, etc., belonging to the successions as shown by the inventory and account except the value of the real estate, and the amount of religious and charitable bequests. There should also be excepted from payment of the tax the debts of the succession. *Succession of Levy*, 115 La. 378, 39 S. 37, affirmed *Cahen v. Brewster*, 203 U. S. 552, 27 S. Ct. 174, 51 L. Ed. 310.

**United States bonds** are not free from tax as such. *Succession of Levy*, 115 La. 377, 39 S. 37, affirmed *Cahen v. Brewster*, 203 U. S. 552, 27 S. Ct. 174, 51 L. Ed. 310, following the case of *Plummer v. Coler*, 178 U. S. 115, 20 S. Ct. 829, 44 L. Ed. 998.

**“This Tax Shall Not be Enforced When the Property . . . Shall Have Borne its Just Proportion of Taxes.”**

This just provision seems to be contained in no other inheritance tax in this country. The court holds that “the values which are liable to the inheritance tax are to be arrived at by deducting from the total value of the estate the aggregate amount of the debts and special legacy and then subtracting from the remainder the value of the property shown to have previously borne its just proportion of tax, this second remainder to be divided in parts representing respectively the taxable inheritances” of the descendants. *Succession of Abadie*, 118 La. Ann. 708, 43 S. 306.

It was claimed that shares of stock were exempt under this provision where an assessment against the corporations had been made on all of their property. The court holds, however, that the taxation

of corporate capital stock, franchises and property is not a taxation of the shares held by individual stockholders; and therefore these taxes are not exempt from the operation of the inheritance tax law of 1904. *Succession of Kohn*, 115 La. Ann. 71, 38 S. 898.

It was argued that the tax should not be collected on bonds belonging to the estate because in 1905 the decedent sold certain real estate on which the taxes had been paid and with the proceeds of the sale during the same year purchased bonds which she owned at the time of her death in January, 1906. It was not contended that any taxes have ever been paid on these bonds but it was argued that as the decedent had paid all taxes assessed against her real estate and with the proceeds of the sale purchased bonds the latter must be construed in the light of property which has borne its just proportion of taxes. The court holds that there would be weight in this contention if the constitution had exempted persons who have paid all the taxes assessed against them, but as the law excepts property inherited it cannot construe the article so as to substitute persons for property. The question of the exemption of property from the tax can only arise after the opening of the succession by the death of the decedent, and the right of the heirs and of the fisc must be determined by the state of facts then existing. That other property formerly owned by the decedent may have borne its just proportion of taxes is a matter entirely foreign to the inquiry. *Succession of Pritchard*, 118 La. Ann. 883, 43 S. 537.

The contract of an insurance agent with his company provided that in case of his death his representative should be entitled to certain commissions on renewals. It was claimed under La. St. 1906, c. 109, p. 173, providing that the tax shall not be imposed on the property inherited until it shall have borne its just proportion of taxes prior to the time of such inheritance, that as the premiums had been taxed therefore the inheritance tax should not be laid. The court holds, however, that the premiums do not form the subject-matter of the inheritance, but are due to and are paid to and belong to the company, and the heirs inherit simply an incorporeal right, whose only relation to the premiums is that its amount is determined by a computation based on their net amount, and the contract does not invest the heirs with the ownership of the premiums or any part thereof, but only with the right to require of the insurance company payment of an amount of money measured by the net amount of the premiums, and the right thus inherited has never been assessed and has never borne taxes. *Succession of Fell*, 119 La. Ann. 1037, 44 S. 879.

La. St. 1904, c. 45, p. 102, s. 2, requires the judge to get proof of the exemption from the tax before granting a discharge to the executor or other officer in charge of the succession.

La. St. 1904, c. 45, ss. 3, 4 and 5, cover the collection and payment of the tax and the disposition of the funds.

### **Fees for Collection.**

Section 4 provides that it shall be the duty of the district attorney to take proceedings to enforce the act, and this section is held a complete bar to the claim of the tax collector for an attorney's fee of ten per cent for the services of the attorney by whom he is represented in the suit. *Succession of Levy*, 115 La. 378, 39 S. 37, affirmed *Cahen v. Brewster*, 203 U.S. 552, 27 S. Ct. 174, 51 L. Ed. 310.

La. St. 1904, c. 45, p. 102, does not provide for the payment of interest or penalties in enforcement of the inheritance tax. It is a charge on all the property in the hands of the administrator or executor and is secured by his official bond. The administrator or executor cannot be discharged nor the heirs be put in possession until this tax is paid to the tax collector. No duty as to the collection of such tax is imposed on that official beyond receiving it from the succession representative. Section 4 of the statute provides that it shall be the duty of the district attorney to take proceedings to enforce the act. The act contemplates that the district attorney should do this work without other emolument than his official salary. The provisions of the act exclude the idea of attorney's fees as a penalty, and substitute the district attorney for the official attorney of the tax collector, who, as in words already stated, has no duty to perform except to receive the tax. Therefore the attorney for the tax collector is not entitled to 10 per cent of the tax as a fee. *Succession of Kohn*, 115 La. Ann. 71, 38 S. 898.

La. St. 1906, c. 145, p. 249, approved July 10, 1906, was a special appropriation for compensation to an individual for his services in the collection of inheritance taxes.

### **The Present Act a Substitute and Not a Repeal of the Statute of 1904.**

This act does not refer to the St. 1904 and contains no repealing clause, but it purports to cover the whole subject legislated upon and may therefore be regarded as a substitute for the act of 1904. *Succession of Frigalo*, 123 La. Ann. 71, 48 S. 652. It contains no repealing clause and there is no repugnancy between its provisions and those of the act of 1904 except as to the rate of the inheritance

tax which was reduced from 3 to 2 per cent on direct inheritances and from 10 to 5 per cent on all other inheritances. The act of 1906 was not intended to repeal the act of 1904 as to successions already closed or in which final accounts had not been rendered. There is nothing in the act of 1906 which tends to the conclusion that the law-maker intended to remit inheritance taxes due the state on successions closed or on which final accounts had not been rendered. Such a construction would operate in unjust discrimination against heirs and legatees who had paid their taxes under the act of 1904 and would furnish good grounds for the restitution of all the taxes collected under the provisions of that statute. Where a succession was closed in February, 1906, and a sum of money deposited to cover the inheritance tax the fact that the tax was not paid at that time does not change the law which is applicable to the succession. The tax was due in February, 1906, and it should have been paid before the heirs were put in possession. The state acquired a vested right in the fund to the extent of the tax due and the deposit operated as a payment of the lawful claims of the state and therefore the succession is bound to pay under the La. St. 1904 and not under La. St. 1906. The court relies on *Arnaud v. Arnaud*, 3 La. 336; *Succession of Pritchard*, 118 La. Ann. 883, 43 S. 537.

### THE PRESENT ACT.

La. St. 1906, c. 109. Approved July 7, 1906.

AN ACT TO CARRY INTO EFFECT ARTICLES 235 AND 246 OF THE CONSTITUTION, and to levy taxes solely for the support of the public schools on all inheritances, legacies and other donations *mortis causa*, to provide exemptions therefrom, to prescribe the manner of collecting the same, to fix the fees of attorneys and commissions of tax collectors, and to repeal all conflicting laws.

#### Transfers Taxable. — Rate.

S. 1. Be it enacted by the General Assembly of the State of Louisiana, That there is now and shall hereafter be levied, solely for the support of the public schools, on all inheritances, legacies and other donations *mortis causa* to or in favor of the direct descendants or ascendants of the decedent, a tax of two per centum, and on all such inheritances or dispositions to or in favor of the collateral relatives of the deceased or strangers, a tax of five per centum on the amount or the actual cash value thereof at the time of the death of the decedent.

#### Debts Deducted.

The inheritance tax is not levied on property left by the decedent but on the value actually received by the heir or legatee and therefore under the La. St. 1906, c. 109, where the deceased bequeathed

to her husband all her property, which consisted entirely of her share of the community property, that the debts of the succession should be deducted in fixing the amount of the tax on inheritances. *Succession of May*, 120 La. 692, 45 S. 551.

### **Adopted Children.**

The act of 1906 laid taxes on four classes of persons, ascendants, descendants, collaterals and strangers. Adopted children are not related by blood, so that they are neither ascendants nor collaterals; on the other hand, as they are legal heirs of the estate they are not strangers. It follows, therefore, that they must be persons who by law are given the status of descendants if subject to tax at all. *Succession of Frigalo*, 123 La. Ann. 71, 48 S. 652.

### **Uncertain Contract Rights.**

Where a tax was levied under La. St. 1906, c. 109, p. 173, on the right under an insurance contract to certain commissions on renewal premiums, the claim was made that the inheritance tax could not be exacted because the value of the inheritance was too uncertain, as the policies on renewal might be suffered to lapse and hence that the premiums might never be collected. The court holds that the certainty or uncertainty of policies being renewed is a matter pertaining to the insurance business and that the actuary of the company can no doubt make an estimate sufficiently close for all practical purposes of the actual or present value of this claim against the company. *Succession of Fell*, 119 La. Ann. 1037, 44 S. 879.

### **Foreign Real Estate.**

The court holds that this act in both sections 1 and 2 must be given the same meaning and that that means Louisiana property and therefore does not include in its terms real estate of the succession in another state. The inheritance law is unquestionably dealing with the Louisiana succession law and the word "inheritance" in the first and second sections of the act must be held to have the same meaning and scope. The heirs and legatees do not receive by inheritance under the laws of Louisiana real estate in another state. The legislature must be supposed to have measured the burden of the tax by the extent of the right and privilege which it has itself conferred and not upon that which has been conferred by the

laws of another state. *Succession of Westfeldt*, 122 La. Ann. 836, 48 S. 281.

See notes to the act of 1904, *ante*, p. 518.

#### **Exemptions.**

S. 2. Be it further enacted, etc., The said tax shall not be imposed in the following cases: —

(a) On any inheritance, legacy or other donation *mortis causa* to or in favor of any ascendant or descendant of the decedent below ten thousand dollars in amount or value.

(b) On any legacy or other donation *mortis causa* to or in favor of an educational, religious or charitable institution.

(c) When the property inherited, bequeathed or donated shall have borne its just proportion of taxes prior to the time of such donation, bequest or inheritance.

[See notes to the act of 1904, *ante*, p. 518.]

**An inheritance to descendants of less value than \$10,000** is exempt from taxation under this statute. *Succession of Frigalo*, 123 La. Ann. 71, 48 S. 652.

#### **Sale does not Affect Exemption.**

Where payment of the debts absorbed the whole amount of the proceeds of the personal property and the balance due had to be made from the proceeds of the realty to satisfy the legacies the court holds that there can be no question. The legacy from funds that are not proceeds of property exempt owes a tax. But where there is an exemption the fact of a sale or other disposition made necessary to the discharge of the legacy does not forfeit the exemption. The character of the property was fixed at the date of the death of the testator and the inheritance tax is due on a legacy not paid from the proceeds of exempt property, but it is not due on a legacy necessarily paid from the proceeds of exempt property under Ill. St. 1906, c. 109, p. 173. *Succession of Becker*, 118 La. Ann. 1056, 43 S. 701.

**Property which has borne its just proportion of taxes.** When a partnership has been assessed and has paid the usual taxes, this is sufficient to render the property acquired from the partnership free from tax although the partner's interest has not been assessed and taxed. The court distinguishes the case of a partner from that of a stockholder in a corporation. *Succession of Stauffer*, 119 La. Ann. 66, 43 S. 928.



**Duties and Liabilities of Beneficiaries.**

S. 3. Be it further enacted, etc., It shall be unlawful for any heir, legatee or other beneficiary of a donation *mortis causa* to take or be in possession of any part of the things or property composing the inheritance, legacy or other donation *mortis causa*, or to dispose of the same or any part thereof, until he shall have obtained the authority of the court to that effect, as hereafter provided; and in case he shall so take or be in possession or shall so dispose of such things or property, or any part thereof, he shall no longer have the right of renouncing such inheritance or donation *mortis causa*, and shall remain personally liable for the tax thereon; but he may, without waiting for authority, do such acts as may seem necessary to preserve the property from waste, damage or loss.

**Assessment of Tax.**

S. 4. Be it further enacted, etc., The executor of the will of a person deceased, or the administrator of his succession, shall, after payment of his debts, proceed against the tax collector and all the heirs and legatees of the deceased summarily by rule before the court which has jurisdiction of the succession, to fix the amount of tax due by each heir or legatee, and on trial thereof the court shall render judgment for the same against each heir or legatee, with interest and costs, as hereinafter provided.

**Power of Sale.**

S. 5. Be it further enacted, etc., The executor or administrator shall thereupon pay to the tax collector the amount of tax, with interests and costs, so fixed, on each inheritance, legacy or donation, out of the funds comprised therein, if sufficient. Should there not be sufficient funds, the court shall, on the application of the heir or legatee, grant an order for the sale of the property composing such inheritance, legacy or donation, or so much thereof as may be necessary, for the purpose of paying such judgment. If the same be not paid by the heir or legatee, or an order of sale be not granted, as above provided, within thirty days after the date of the judgment, the court shall, on the application of the executor or administrator, grant an order of sale for the said purpose, as above provided, and the executor or administrator shall pay the said judgment out of the proceeds of the sale. Such sale shall be made in such manner, and on such terms and conditions as the court shall prescribe, and the expense thereof shall be borne by the heir or legatee.

**Duties of Executor.**

S. 6. Be it further enacted, etc., No executor or administrator shall deliver any inheritance or legacy until the tax thereon shall be fixed and paid, as herein provided; otherwise he, together with his surety, shall be personally liable for said tax, with interest and cost. And no executor or administrator shall be discharged until it is shown that all taxes under this act, due by the heirs and legatees, have been paid, or until it is judicially determined by the process herein provided that no tax is due.

**Inventory.**

S. 7. Be it further enacted, etc., In all cases in which an administration is not ordered by the court, the legal or instituted heir, or universal or residuary

legatee, shall within six months after the death of the decedent, or, should there be a will, within the same time after the discovery of the same, present to the court a detailed descriptive list, sworn to and subscribed by him, of all items of property contained in and composing the estate of the decedent, and therein shall state the actual cash value of each such item at the time of the death of the decedent, and service thereof shall be made on the tax collector who shall have the right to traverse the same. Should the deceased have made special or particular legacies or donations *mortis causa*, the legatee shall also be served, and after summarily hearing the said parties the court shall fix the amount of tax due as aforesaid by each such heir or legatee, and shall render judgment therefor, with interest and cost, against each of them.

#### **Payment of Tax on Special or Particular Gifts.**

S. 8. Be it further enacted, etc., In the same manner as provided in section 5, the heir or universal or residuary legatee shall thereupon pay or take measures for the payment of the tax due on all special or particular legacies or donations.

#### **Sale.**

S. 9. Be it further enacted, etc., The heir or universal or residuary legatee may likewise obtain an order for the sale of the property of his inheritance or legacy, or part thereof, for the purpose of paying the tax thereon. But if such tax be not paid, or such order of sale be not made within thirty days after the date of the judgment fixing the amount of the tax, a similar order for the same purpose shall be granted on the application of the tax collector, and thereunder any property forming part of the inheritance or legacy may be sold, and the proceeds thereof shall be applied to the payment of the tax with interest and costs.

#### **Legacy Not to be Delivered till Tax Paid.**

S. 10. Be it further enacted, etc., The heir or residuary or universal legatee shall not deliver any legacy until the tax thereon shall have been fixed and paid; otherwise he shall be personally liable for the said tax, with interest and costs.

#### **Search for Will.**

S. 11. Be it further enacted, etc., If during the six months next following the death of any person leaving property, movable or immovable, within this state, an administration of his succession be not applied for, or his legal or instituted heir or universal or residuary legatee do not apply to the court to be placed in possession thereof, as herein provided, the court shall *ex parte* and on the application of the tax collector grant an order directing that a search be made for the will of the deceased by a notary public, and in aid of the same may order that all persons having in their possession or control any books, papers or documents of the deceased, or any bank box, safe deposit vault or other receptacle likely or designed to contain the same, shall open such receptacle and exhibit the contents thereof, as well as all other books, papers and documents of the deceased, to the said notary.

#### **Probate of Will.**

S. 12. Be it further enacted, etc., Should the said notary find any document appearing to be the will of the deceased, he shall take possession of the same

and produce it in court; and on application of the tax collector, or of any party in interest, the court shall proceed to the probate thereof, as now provided by law. If an executor be therein appointed, the person named shall be notified, and if he do not within ten days after notification accept the appointment, and if within the ten days next following this delay no person entitled to be appointed dative testamentary executor shall apply for the appointment, then the public administrator in the parish of Orleans, and in the other parishes the tax collector, shall be appointed dative testamentary executor of the said decedent and the administration of his succession shall proceed as herein directed and according to existing law.

#### **Assessment of Tax where no Will Found.**

S. 13. Be it further enacted, etc., If the notary can find no will, he shall report the fact to the court; and thereupon the tax collector shall proceed against the legal heir or heirs of the deceased summarily by rule to fix the amount of tax due by him or them, and each of the heirs shall be ordered, within a delay to be fixed by the court, which may be extended from time to time in the discretion of the court, to make and file a detailed descriptive list, sworn to and subscribed by him, of all the items of property contained in and composing the estate of the decedent, stating therein the actual cash value of each such item at the time of the death of the decedent, and the tax collector shall have a right to traverse the same. On trial of the rule the court shall fix the amount of tax due by each of the heirs, and shall render judgment for the same against each of them, and in such case, as well as in the cases mentioned in section 12, shall include, in the costs payable by the heir or legatee, a fee of not more than ten per cent on the amount of tax due by each heir or legatee in favor of the attorney for the tax collector, in the same manner and under the same conditions as provided in sections 5 and 9 of this act, such heirs or legatees shall have the right to procure the sale of their inheritances or legacies for the purpose of paying the tax due thereon, with interest, costs and attorney's fees; and if payment thereof be not made by the heir or legatee, or if an order of sale, as above provided, be not granted, within thirty days after the date of the judgment, the tax collector shall be entitled to a similar order, and thereunder any property forming part of the inheritance or legacy may be sold.

#### **Parties.**

S. 14. Be it further enacted, etc., Should there be more than one legal or instituted heir or universal or residuary legatee any one of them may institute the proceedings provided by this act, and the others shall be made parties thereto, and such heir shall be entitled to recover out of the mass of the succession one reasonable attorney's fee, besides his costs.

#### **Creditors' Rights Preserved.**

S. 15. Be it further enacted, etc., Nothing contained in this act shall affect the rights of creditors of persons deceased, or the rights of the creditors of the heirs or legatees of such persons, as established by the general law.

#### **Restrictions on Beneficiaries.**

S. 16. Be it further enacted, etc., Each inheritance or legacy is indivisible, and must be accepted or renounced for the whole; and the heir or legatee shall

not be entitled to be placed in possession of the same, and shall be without right or capacity to alienate any part thereof, until the tax on the whole shall have been fixed and paid, or until it shall have been judicially determined, in the manner herein provided, that no part of the same is subject to the tax imposed by this act.

#### **Liabilities on Transfer.**

S. 17. Be it further enacted, etc., No bank, banker, trust company, warehouseman, or other depository and no person or corporation or partnership having on deposit or in possession or control any moneys, credits, goods or other things or interest rights of value for a person deceased, or in which he had any interest, and no corporation the stock or registered bonds of which are owned by a person deceased shall deliver or transfer such moneys, credits, stock, bonds or other things or rights of value to any heir or legatee of such deceased person, unless the tax due thereon under this act shall have been paid, or unless it be judicially determined in the manner herein prescribed that no tax is due by such heir or legatee. Otherwise the person or corporation so making delivery or transfer shall be liable for the said tax. But the order of a court of competent jurisdiction, directing such delivery or transfer, shall be full authority for the same.

#### **Burden of Proving Exemption.**

S. 18. Be it further enacted, etc., The burden of proving facts establishing exemption from the tax imposed by this act is upon the person claiming exemption.

#### **Jurisdiction of District Court.**

S. 19. Be it further enacted, etc., The district court of the last domicile of the deceased, and in the parish of Orleans the civil district court, shall have original jurisdiction to hear and determine all the proceedings provided by this act. In the case of a non-resident decedent, the district court, or civil district court, of any parish in which he left property, movable or immovable, shall exercise such jurisdiction, and the court in which such proceedings shall be first begun shall have exclusive original jurisdiction thereof.

#### **Absentees.**

S. 20. Be it further enacted, etc., Non-residents and unknown heirs and legatees, and those whose whereabouts are unknown, shall be represented by curator *ad hoc* appointed by the court, and all notices, citations and demands prescribed by this act shall be served on such officers. Though there be in any case more than one unknown or absent heir or legatee, all may be represented by the same curator.

#### **Officers.**

S. 21. Be it further enacted, etc., The tax collector spoken of and intended by this act is the sheriff and *ex officio* tax collector of the parish in which was the last residence of the decedent, or in which is situated property of a non-resident decedent, and in the Parish of Orleans the clerk of the civil district court. They shall receive a commission of two per cent on their collections of taxes under this act.

**Attorneys to Collect Tax.**

S. 22. Be it further enacted, etc., In and for the Parish of Orleans the governor shall appoint, by and with the advice and consent of the senate, for a term of four years, an attorney at law, whose duty it shall be to advise, assist and represent the clerk of the civil district court in the enforcement of this act. For his services, except as provided in sections 12 and 13, he shall receive a fee of four per cent on all taxes collected hereunder, payable out of the same before transmission to the treasury. In all other parishes of the state the said duties shall be performed by the attorneys appointed under existing law to assist the tax collectors in the collection of delinquent licenses, and the compensation of such attorneys shall be as above provided.

[See notes to the Act of 1904, *ante*, p. 520.]

**Use of Mortality Tables.**

S. 23. Be it further enacted, etc., In fixing the value of any legacy or donation *mortis causa* which consists in whole or in part of an annuity or usufruct or right of use or habitation, the court shall consider the expectancy of life of the legatee or donee according to the table known as the American experience table of mortality, at six per cent per annum compound interest.

**Interest.**

S. 24. Be it further enacted, etc., The taxes hereby levied shall bear interest at the rate of two per cent per month, beginning six months after the death of the decedent; saving to any heir, legatee or donee the right to stop the running of interest against him by paying the amount of his tax with accrued interest, or by tendering the same to the tax collector in the manner prescribed by the general law; provided, however, that in cases in which the settlement of the succession is not unduly delayed, or in which the right of any party to receive an inheritance or legacy is contested, and in all cases in which the failure to pay tax on any legacy or inheritance within the period aforesaid is not imputable to the laches of the heir or legatee, the court may, in its discretion, remit such interest.

**Costs. — To what Estates the Act Applies.**

S. 25. Be it further enacted, etc., The costs of all proceedings under this act shall be borne by the mass of the succession; provided, that in cases in which it seems to him equitable to do so the judge shall have power to apportion the costs among the several parties, or allow any party to retain his costs out of any sum found to be due by him for tax hereunder. Provided, the provisions of this act shall affect all successions not finally closed, or in which the final account has not been filed.

**“All Successions not Finally Closed.”**

Where the decedent died January 11, 1906, and the succession was closed by a judgment February 7, 1906, recognizing the heirs and ordering them to be put into possession, and as this was done before the La. St. 1906 went into effect, this succession was not affected by that statute but was governed by the La. St. 1904. *Succession of Pritchard*, 118 La. Ann. 883, 43 S. 537.

The testator died in 1903 and his succession was opened and a large portion of the property distributed prior to the passage of the statute of 1904 and the succession was not finally closed at the date of the passage of the statute of 1906. The court, relying upon the case of *Cahen v. Brewster*, 203 U. S. 543, 27 S. Ct. 174, 51 L. Ed. 310, affirming *Succession of Levy*, 115 La. 378, 39 S. 37, holds that it is competent for the legislature to impose a tax on inheritances which are in *gremio legis* and which have not as a matter of fact passed into the possession of the heirs or donees, and therefore the La. St. 1906 may properly apply to this succession. *Succession of Stauffer*, 119 La. Ann. 66, 43 S. 928.

## MAINE.

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### In General.

Maine began to tax collateral inheritances in 1893 and direct inheritances under a progressive rate in 1909. The act of 1911 did not alter the rates but added adopting parents to the most favored class.

Exemptions apply to each individual inheritance and not to the estate as a whole. Probate courts have charge of inheritance tax matters. In some of them the tax is imposed on the full amount of the inheritance; thus an inheritance of \$40,000 to a child is taxed \$400, one per cent on the whole \$40,000; but in other probate courts the tax is collected on the excess over the exemption only, and in such courts the tax would be only \$300, one per cent on the excess over \$10,000. The same uncertainty prevails in the case of large inheritances, as to whether they are taxable at the increased rate only, on the excess over the minimum figure or on the entire inheritance. There has been as yet no authoritative decision.

Maine has taken an advanced position in trying to avoid double taxation. Property of a resident situated outside the state, if taxed by another state or country, is taxed in Maine only for the difference if the Maine tax is the greater. Property of a non-resident within the jurisdiction of Maine, if subject to a tax in his home state or country, pays to Maine only so much as the Maine tax may be in excess of the tax in the place of residence.

Maine is taxing stock of Maine corporations owned by non-residents, except such as have less than \$1,000 in property within the state, but the usual provision that the corporation itself shall be responsible for the tax if it transfers stock before the tax is paid was not inserted until 1911.

It used to be the general practice in the probate courts to tax Boston & Maine shares on their full value, though the company is also incorporated in Massachusetts and New Hampshire, and only a relatively small portion of its line is in Maine, but the act of 1911 has upset this practice.

## Constitutional Limitations.

### Maine Constitution 1875, a. 1, s. 1.

All men are born equally free and independent, and have certain natural, inherent and inalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing and protecting property, and of pursuing and obtaining safety and happiness.

### A. 9, s. 7.

While the public expenses shall be assessed on polls and estates, a general valuation shall be taken at least once in ten years.

### A. 9, s. 8.

All taxes upon real and personal estate, assessed by authority of this state, shall be apportioned and assessed equally according to the just value thereof.

## List of Statutes.

- 1893. Laws of Maine, c. 146.
- 1895. " " " c. 96.
- 1901. " " " c. 225. (See also c. 1, s. 6, *In re Construction of Statutes*.)
- 1903. " " " c. 156.
- 1905. " " " c. 124.
- 1909. " " " c. 186.
- 1909. " " " c. 187.
- 1911. " " " c. 163.
- 1903. Revised Statutes of Maine, c. 8, ss. 69 to 85.
- 1905. Report of Revision of the Public Laws, pp. 148, 977.

## History of Succession Taxes.

"Succession duties or taxes have been in existence in other countries for centuries, and have been regarded with favor, as a convenient and comparatively non-burdensome means of revenue. They were well known in Roman jurisprudence (Gibbon's Rome, Vol. 1, p. 133), and were imposed upon all successions, except those to the nearest relatives, and to the poor. The practice has long been resorted to in European countries, and was introduced in England in the last century, and was enlarged from time to time till 1853, when it was extended to all successions to real property, chattels real, and a vast variety of personal property and rights." *Per Strout, J., in State v. Hamlin*, 86 Me. 495, 498, 30 A. 76, 41 Am. St. Rep. 569, 25 L. R. A. 632.

## Right of Descent is Merely Statutory.

"The constitution guarantees to the citizen the right of acquiring, possessing and protecting property. (Article 1, section 1, which includes also the right of disposal.) But the guaranty ceases to



operate at the death of the possessor. There is no provision of our constitution, or that of the United States, which secures the right to any one to control or dispose of his property after his death, nor the right to any one, whether kindred or not, to take it by inheritance. Descent is a creature of statute, and not a natural right. 2 Blackstone's Com., pages 10, 11, 12, 13; *Strode v. Com.*, *supra*. At common law, prior to the statute of distribution in England, 22 and 23 Car. 11, descent of personal property could hardly be recognized even after the statute requiring administration to be granted; the administrator, after the payment of the debts and funeral expenses of the deceased, was entitled to retain to himself the residue of his effects, the court holding that there was no power to compel a distribution. 2 Bl. Com. 515; *Edwards v. Freeman*, 2 P. Wms. 442." *Per* Strout, J., in *State v. Hamlin*, 86 Me. 495, 30 A. 76, 41 Am. St. Rep. 569, 25 L. R. A. 632.

### THE ACT OF 1893.

#### Statute Adopted from New York.

This statute contains substantially the same provisions and nearly the same exemptions as the N. Y. St. 1885, c. 483. *State v. Hamlin*, 86 Me. 495, 30 A. 76, 41 Am. St. Rep. 569, 25 L. R. A. 632.

#### Due Process of Law.

It was claimed that the act of 1893 was in violation of the fourteenth amendment of the federal constitution which prohibited any state from depriving any person of property without due process of law, and the court holds that section 12, providing for appraisal of the estate upon application of any person interested, and section 13, giving the probate court power to hear and determine all questions in relation to such tax that may arise subject to appeal as in other cases, fully secure the rights of all parties interested and satisfy the requirement of due process of law. *State v. Hamlin*, 86 Me. 495, 507, 30 A. 76, 41 Am. St. Rep. 569, 25 L. R. A. 632.

Me. St. 1893, c. 146. Approved February 9, 1893.

S. 1. All property within the jurisdiction of this state, and any interest therein, whether belonging to inhabitants of this state or not, and whether tangible or intangible, which shall pass by will or by the intestate laws of this state, or by deed, grant, sale, or gift made or intended to take effect in possession or enjoyment after the death of the grantor, to any person in trust or otherwise, other than to or for the use of the father, mother, husband, wife, lineal descendant, adopted

child, the lineal descendant of any adopted child, the wife or widow of a son, or the husband of the daughter of a decedent, shall be liable to a tax of two and a half per cent of its value, above the sum of five hundred dollars, for the use of the state, and all administrators, executors and trustees, and any such grantee under a conveyance made during the grantor's life shall be liable for all such taxes, with lawful interest as hereinafter provided, until the same shall have been paid as hereinafter directed.

### **Not a Property Tax. — Uniformity.**

The court holds that the Maine inheritance law of 1893 is clearly an excise tax and not a tax upon property and is therefore not obnoxious to the constitutional provision above quoted. It is uniform in its rates as to the entire class of collaterals and strangers, which satisfies the constitutional requirement of uniformity. *State v. Hamlin*, 86 Me. 495, 502, 30 A. 76, 41 Am. St. Rep. 569, 25 L. R. A. 632.

### **Classification by Relationship Valid.**

"It is necessary to make a collateral inheritance tax uniform as to the entire class of collaterals. It must not tax one and exempt another in the same class. But it is not a violation of this principle to require an excise from all collaterals and strangers and exempt from the excise classes nearer in blood to the deceased. "The right to dispose of estates by will is of very ancient origin, but is a creature of municipal law, and not a natural right. *Redfield Wills*, c. 1, s. 1; *Mager v. Grima*, 8 How. 494. Before the statute of wills in England, 32, 34 and 35, Henry VIII, the right did not extend to real estate, and was limited as to personal, if the testator left a widow or children. If he had both, he could dispose of but one-third of his personal estate by will; if but one, he could dispose of one-half. This right has since been extended by statute to include real estate, and all personal. The restriction has never existed in this country, except as to widows, where right to dower and a share of the personal estate is secured by statute in most of the states, and in Louisiana, where the rules of the civil law prevail." *Per Strout, J.*, in *State v. Hamlin*, 86 Me. 495, 30 A. 76, 41 Am. St. Rep. 569, 25 L. R. A. 632.

### **Valid as Applied to Non-Residents.**

Me. St. 1893 applies equally to citizens of Maine and other states and therefore is not in conflict with a provision of the fourteenth amendment that "no state shall make or enforce any law which

shall abridge the privileges or immunities of the citizens of the United States." *State v. Hamlin*, 86 Me. 495, 507, 30 A. 76, 41 Am. St. Rep. 569, 25 L. R. A. 632.

**"Above the Sum of Five Hundred Dollars."**

The court holds that this exemption of five hundred dollars is not an exemption from the corpus of the estate but is a several exemption of that sum from each portion of the estate passing by will or descent. The court relies on the provisions of the second section providing for the deduction of five hundred dollars from taxable interests on appraisal. *State v. Hamlin*, 86 Me. 495, 508, 30 A. 76, 41 Am. St. Rep. 569, 25 L. R. A. 632.

Me. St. 1893, c. 146, s. 2, covers the taxation of remainders. Section 3 provides that the excess above reasonable compensation bequeathed to executors or trustees, shall be liable to tax. Sections 4 to 16 cover the appraisal of the property and the collection and payment of the tax.

**Me. St. 1893, c. 146.**

S. 17. In the foregoing sections relating to collateral inheritances the word "person" shall be construed to include bodies corporate as well as natural persons; the word "property" shall be construed to include both real and personal estate, and any form of interest therein whatsoever, including annuities.

S. 18. This act shall not apply to any case now pending in the probate court, and shall take effect when approved.

**Not Retrospective.**

The court finds that this statute was never intended to have a retroactive effect and therefore that where the testator died before the statute went into effect and where his will was filed and probated after the statute was passed no inheritance tax was due.

The court remarks that to construe the statute as applying to estates where distribution had not been made when the statute was passed, although the testator died before that time, would result in great inequality, as the liability to taxation would in many instances be determined by the fact whether proceedings for the settlement of the estate were commenced before or after February 9, 1893. It is unnecessary to impute to the legislature a purpose to frame legislation which would thus have the practical effect to disturb vested rights and create a test of liability thus depending upon accident and chance. *In re Collateral Inheritance Tax*, 88 Me. 587, 34 A. 530.

### **The Amendments of 1895.**

Me. St. 1895, c. 96, approved March 14, 1895, amends Me. St. 1893, c. 146, s. 1, by adding to the exempted classes "any educational, charitable or benevolent institution in this state." Section 2 makes the foregoing amendment to section 1 applicable to all such taxes unpaid.

Section 3 made certain changes in the tax on remainders to conform with section 1 as amended, and also changed the times of payment by providing that the tax might be paid within one year from the death of said testator or within such further time as the judge of probate may allow.

Section 4 amended section 4 of the statute of 1893.

Section 5 amended section 5 of the statute of 1893; section 6 amended section 12 of the statute of 1893 by providing that the property shall be appraised "after public notice or personal notice to the state assessors and all persons interested in the succession to said property."

Section 7 repealed section 14 of the statute of 1893; section 8 amended section 16 of the statute of 1893; section 9 provides for personal liability of the executors for the tax.

### **Later Amendments.**

Me. St. 1901, c. 225, approved March 20, 1901, amends Me. St. 1895, c. 96, by changing the rate of tax from two and one-half per cent to four per cent.

Me. St. 1903, c. 156, approved March 26, 1903, adds religious institution to the exempt classes.

S. 2. All such taxes heretofore assessed or to be assessed upon legacies or bequests to religious institutions are hereby abated.

Me. St. 1905, c. 124, approved March 21, 1905, amends revised statutes, chapter 8, by adding sections 86 and 87. Section 86 provides that the register of probate shall annually deliver to the county attorneys a list of the estates appearing to be liable to the collateral inheritance tax and that the county attorney shall investigate and may cite parties into the probate court. Section 87 gives the county attorney authority to proceed to have an administrator appointed where no application for probate or administration was made within six months after the death of the decedent.

Me. St. 1909, c. 186, approved April 1, 1909, amends Revised Statutes, chapter 8, sections 69 and 70; and chapter 187 amends

Revised Statutes, chapter 8, sections 86 and 87, as enacted by the statute of 1905, chapter 124. Chapter 187 also amends Revised Statutes, chapter 8, sections 72, 79, 82, 83, 85. Sections 88 and 89 are further added to the act.

Me. St. 1911, c. 163, approved March 30, 1911, amends Revised Statutes, chapter 8, sections 69, 72 and 88, and adds seven new sections, and is entitled:—

AN ACT TO AMEND CHAPTER EIGHT OF THE REVISED STATUTES, as amended by chapter one hundred and eighty-six of the public laws of nineteen hundred and nine, chapter one hundred and twenty-four of the public laws of nineteen hundred and five and chapter one hundred and eighty-seven of the public laws of nineteen hundred and nine, in relation to collection of inheritance taxes.

### THE PRESENT ACT.

Maine Revised Statutes, c. 8, s. 69. [As amended by St. 1911, c. 163.]

#### Taxable Transfers. — Rates. — Exemptions.

All property within the jurisdiction of this state, and any interest therein, whether belonging to inhabitants of this state or not, and whether tangible or intangible, which shall pass by will, by the interstate laws of this state, by allowance of a judge of probate to a widow or child by deed, grant, sale or gift, except in cases of a *bona fide* purchase for full consideration in money or money's worth, and except as herein otherwise provided made or intended to take effect in possession or enjoyment after the death of the grantor, to any person in trust or otherwise except to or for the use of any educational, charitable, religious or benevolent institution in this state, the property of which is by law exempt from taxation, shall be subject to an inheritance tax for the use of the state as hereinafter provided. Property which shall so pass to or for the use of (class A) the husband, wife, lineal ancestor, lineal descendant, adopted child, the adopted parent, the wife or widow of a son, or the husband of a daughter of a decedent, shall be subject to a tax upon the value of each bequest, devise or distributive share, in excess of the exemption hereinafter provided, of one per cent if such value does not exceed fifty thousand dollars, one and one-half per cent if such value exceeds fifty thousand dollars and does not exceed one hundred thousand dollars, and two per cent if such value exceeds one hundred thousand dollars; the value exempt from taxation to or for the use of a husband, wife, father, mother, child, adopted child, or adopted parent shall in each case be ten thousand dollars, and the value exempt from taxation to or for the use of any other member of (class A) shall in each case be five hundred dollars. Property which shall so pass to or for the use of (class B) a brother, sister, uncle, aunt, nephew, niece or cousin of decedent, shall be subject to a tax upon the value of each bequest, devise or distributive share in excess of five hundred dollars, and the tax of this class shall be four per cent of its value for the use of the state if such value does not exceed fifty thousand dollars, four and one-half per cent if its value exceeds fifty thousand dollars and does not exceed one hundred thousand dollars and five per cent if its value exceeds one hundred thousand dollars. Property which shall

pass to or for the use of any others than members of class A, Class B and the institutions excepted in the first sentence of this section, shall be subject to a tax upon the value of each bequest, devise or distributive share in excess of five hundred dollars, and the tax of this class shall be five per cent of its value for the use of the state if such value does not exceed fifty thousand dollars, six per cent if its value exceeds fifty thousand and does not exceed one hundred thousand dollars and seven per cent if its value exceeds one hundred thousand dollars. Administrators, executors and trustees, and any grantees under such conveyances made during the grantor's life shall be liable for such taxes, with interest, until the same have been paid.

[See notes to the Act of 1893, *ante*, p. 533 *et seq.*]

#### **Value of Prior Estate, how Determined and how Taxed.**

S. 70. [As amended by St. 1909, c. 186, s. 2.] Whenever property shall descend by devise, descent, bequest or grant to a person for life or for a term of years and the remainder to another, except to or for the use of any educational, charitable, religious or benevolent institution in this state, the value of the prior estate shall be determined by the actuaries' compound experience tables at four per cent compound interest and a tax imposed at the rate prescribed in the preceding section for the class to which the devisee, legatee or grantee of such estate belongs and a tax shall be imposed at the same time upon the remaining value of such property at the rate prescribed in said section for the class to which the devisee, legatee or grantee of such remainder belongs, subject to the exemptions provided in the preceding section.

#### **Excess of Reasonable Compensation to Executors for Services when Residuary Legatees, shall be Taxed.**

S. 71. Whenever a decedent appoints one or more executors or trustees, and in lieu of their allowance makes a bequest or devise of property to them which would otherwise be liable to said tax, or appoints them his residuary legatees, and said bequests, devises or residuary legacies exceed a reasonable compensation for their services, such excess shall be liable to such tax, and the court of probate having jurisdiction of their accounts shall determine the amount of such reasonable compensation.

#### **When Tax Payable. — Petition for Assessment. — Lien.**

S. 72. [As amended by St. 1909, c. 187, s. 2; St. 1911, c. 163.] All taxes imposed by section sixty-nine upon the estates of deceased residents of this state shall be payable to the treasurer of state and all taxes imposed by said section sixty-nine upon the estates of non-resident decedents to the attorney general by the executors, administrators or trustees at the expiration of two years after the granting of letters testamentary or of administration; but if legacies or distributive shares are paid within two years, the tax thereon shall be payable at the same time; and if the same are not so paid, interest at the rate of six per cent a year shall be charged and collected from the time the same became payable; but no such tax upon estates of residents or inhabitants of this state shall be accepted except upon presentation of a certificate from a probate court showing the amount of such tax due. It shall be the duty of the personal representative of said deceased to petition the probate court having jurisdiction to assess such

taxes before the payment of any such legacies or distributive shares, and before the expiration of two years after the granting of letters aforesaid. The register of probate shall send by registered mail a copy of such petition to the attorney general at least seven days before the hearing thereon unless the attorney general in writing waives the same.

If no such petition is filed within the time limited, the attorney general may file a similar petition, of which, unless notice is waived, at least fourteen days' notice shall be given such personal representative or his agent. In either case the attorney general may appear and be heard upon the assessment of such tax and an appeal may be had from the decree of the judge of probate by either party. Real estate of which the decedent died seized or possessed, subject to taxes as aforesaid shall be charged with a lien for all such taxes and interest, which lien may be discharged by the payment of all taxes due and to become due upon said real estate or separate parcel thereof, or by an order or decree of the probate court discharging said lien, said order or decree to be granted by the probate court upon the deposit with said court of a sum of money or a bond, sufficient to secure to the state the payment of any tax due or to become due on said real estate. Orders or decrees discharging such lien may be recorded in the registry of deeds in the county where said real estate is located.

**Failure to Pay Tax Renders Administrator Liable. — An Action of Debt may be Maintained for Tax.**

S. 73. After failure to pay such tax, as provided in the preceding section, such an administrator, executor or trustee is liable to the state on his administration bond for such tax and interest, and an action shall lie thereon without the authority of the judge of probate; or an action of debt may be maintained in the name of the state against any such administrator, executor or trustee, or any such grantee, for such tax and interest. But if such administrator, executor or trustee, after being duly cited therefor, refuses or neglects to return his inventory or to settle an account, by reason whereof the judge of probate cannot determine the amount of such tax, such administrator, executor or trustee shall be liable to the state on his administration bond for all damages occasioned thereby.

**Property shall not be Delivered to Legatee until Tax is Paid.**

S. 74. Any administrator, executor or trustee, having in charge or trust any property subject to such tax, shall deduct the tax therefrom, or shall collect the tax thereon, and interest chargeable under section seventy-two from the legatee or person entitled to said property, and he shall not deliver any specific legacy or property subject to said tax to any person until he has collected the tax thereon.

**All Taxes Payable upon Real Estate shall Remain a Charge thereon until Paid.**

S. 75. Whenever any legacies subject to said tax shall be charged upon or payable out of any real estate, the heir or devisee, before paying the same, shall deduct said tax therefrom and pay it to the executor, administrator or trustee, and the same shall remain a charge upon said real estate until it is paid; and payment thereof shall be enforced by the executor, administrator or trustee, in the same manner as the payment of the legacy itself could be enforced.

**When Legacy is in Money for a Limited Period, Executor shall Retain Tax on Whole Amount, otherwise Judge of Probate shall Make an Apportionment.**

S. 76. If any such legacy be given in money to any person for a limited period such administrator, executor or trustee shall retain the tax on the whole amount; but if it be not in money, he shall make an application to the judge of probate having jurisdiction of his accounts to make an apportionment, if the case requires it, of the sum to be paid into his hands by such legatee on account of said tax and for such further order as the case may require.

**Sale of Real Estate to Pay Tax.**

S. 77. All administrators, executors and trustees shall have power to sell so much of the estate of the deceased as will enable them to pay said tax in the same manner as they may be empowered to do for the payment of his debts.

**No Final Settlement of Accounts shall be Allowed until all Taxes have been Paid.**

S. 78. No final settlement of the account of any executor, administrator or trustee shall be accepted or allowed by any judge of probate unless it shall show, on oath or affirmation of the accountant, and the judge of said court shall find, that all taxes, imposed by the provisions of section sixty-nine, upon any property or interest therein belonging to the estate to be settled by said account, shall have been paid, and the receipt of the treasurer of state for such tax shall be the proper voucher for such payment.

**Inventory or Copy thereof of any Estate Subject to Tax shall be Furnished Attorney General.**

S. 79. [As amended by 1909, c. 187, s. 3.] A copy of the inventory of every estate, any part of which may be subject to a tax under the provisions of section sixty-nine, or if the same can be conveniently separated, then a copy of such part of such inventory with the appraisal thereof, shall be sent by mail by the register or the judge of the court of probate in which such inventory is filed to the attorney general within ten days after the same is filed. The fees for such copy shall be paid by the executor, administrator or trustee, and allowed in his account.

**Whenever any Real Estate Passes to Another Person and Subject to Tax, State Assessors shall be Informed.**

S. 80. Whenever any of the real estate of a decedent shall so pass to another person as to become subject to said tax, the executor, administrator or trustee of the decedent shall inform the board of state assessors thereof within six months after he has assumed the duties of his trust, or if the fact is not known to him within that time, then within one month after it does become so known to him.

**Whenever any Property shall be Refunded by Legatee, Tax shall be Paid Back.**

S. 81. Whenever for any reason the devisee, legatee or heir who has paid any such tax shall refund any portion of the property on which it was paid, or it shall be judicially determined that the whole or any part of such tax ought not to have



been paid, said tax, or the due proportional part of said tax, shall be paid back to him by the executor, administrator or trustee.

**How Value of Property Shall be Fixed. — Fees for Appraisal, How Paid.**

S. 82. [As amended by 1909, c. 187, s. 4.] The value of such property as may be subject to said tax shall be its actual market value as found by the judge of probate, after public notice or personal notice to the board of state assessors and all persons interested in the succession to said property, or the board of state assessors or any of said persons interested may apply to the judge of probate having jurisdiction of the estate and on such application the judge shall appoint three disinterested persons, who, being first sworn, shall view and appraise such property at its actual market value for the purposes of said tax, and shall make return thereof to said probate court, which return may be accepted by said court in the same manner as the original inventory of such estate is accepted, and if so accepted it shall be binding upon the person by whom such tax is to be paid, and upon the state. And the fees of the appraisers shall be fixed by the judge of probate and paid by the executor, administrator or trustee.

This section with the following section, satisfies the provision of the federal constitution as to due process of law. *State v. Hamlin*, 86 Me. 495, 507, 30 A. 76, 41 Am. St. Rep. 569, 25 L. R. A. 632.

**Court of Probate shall have Jurisdiction to Determine all Questions Relating to Tax. — Notice and Hearing. — Appeals.**

S. 83. [As amended by 1909, c. 187, s. 5.] The court of probate, having either principal or ancillary jurisdiction of the settlement of the estate of the decedent, shall have jurisdiction to hear and determine all questions in relation to said tax that may arise affecting any devise, legacy or inheritance under this chapter, subject to appeal as in other cases, and the attorney general shall represent the interests of the state in any such proceedings. The judge of probate, having jurisdiction as aforesaid, shall fix the time and place for hearing and determining such questions and shall give public notice thereof and personal notice to the executor, administrator or trustee. Appeals in behalf of the estate shall be taken in the name of the executor, administrator or trustee and service upon the attorney general shall be sufficient. When appeals are taken by the state, service shall be made upon the executor, administrator or trustee.

This and the previous section together satisfy the provision of the federal constitution as to due process of law. *State v. Hamlin*, 86 Me. 495, 507, 30 A. 76, 41 Am. St. Rep. 569, 25 L. R. A. 632.

**Fees of Judges and Registers of Probate.**

S. 84. The fees of judges or registers of probate for the duties required of them by the fifteen preceding sections shall be, for each order, appointment, decree, judgment, or approval of appraisal or report required hereunder, fifty cents, and for copies of records, the fees that are now allowed by law for the same. And the administrators, executors, trustees or other persons paying said

tax shall be entitled to deduct the amount of all such fees paid to the judge or register of probate from the amount of said tax to be paid to the treasurer of state.

**How Words shall be Construed.**

S. 85. [As amended by 1909, c. 187, s. 6.] In the foregoing sections relating to inheritances the word "person" shall be construed to include bodies corporate as well as natural persons; the word "property" shall be construed to include both real and personal estate, and any form of interest therein whatsoever including annuities.

[Compare Revised Statutes, c. 1, s. 6.]

X. The word "land or lands," and the words "real estate," include lands and all tenements and hereditaments connected therewith, and all rights thereto and interest therein.]

**Registers of Probate shall Annually Deliver to Attorney General List of Estates Appearing to be Liable to Collateral Inheritance Tax. — Proceedings Thereon.**

S. 86. [As added by 1905, c. 124; amended by 1909, c. 187, s. 1.] The registers of probate in the several counties shall deliver to the attorney general, on or before the first day of June in each year, a list of all estates in which it appears from the record that some part of said estate may be liable to an inheritance tax, and in which a will has been offered for probate or administration granted for more than one year prior to the time of filing such list, and in which no inheritance tax has been assessed or paid.

Said list shall contain the name of the deceased, the date of the administration granted, and the name and residence of the administrator or executor.

The attorney general shall promptly investigate all cases so reported, by notifying the executor, administrator, trustee, heir or devisee, and in such other manner as he may determine, and if it appears to him that in any such case an inheritance tax is due the state and has not been paid to the state, he shall, unless said tax is paid to the state, within thirty days after notice from him to the executor, administrator, trustee, heir or devisee that the same is due, cite the executor, administrator, trustee, heir or devisee, whose duty it is to pay said tax, before the proper probate court in such manner as is provided for the citation of trust officers in probate proceedings and shall take all other action necessary to secure the payment of said tax.

In such proceedings the attorney general shall recover costs to be fixed and determined by the judge of probate in his discretion, which costs may be retained by said attorney general for his own use and shall be additional to any salary allowed to him by law.

**Certain Actions in Behalf of the State may be Brought in any County.**  
**Revised Statutes, c. 83, s. 15.**

An action in behalf of the state to enforce the collection of state taxes upon any corporation, or to recover of any person or corporation moneys due the state, public funds or property belonging to the state, or the value thereof, may be brought in any county; *provided*, that on motion of the defendant, any justice of the supreme judicial court, holding the term at which such action is returnable,

may, for sufficient reasons shown, remove the same to the docket of said court in any other county for trial, and may upon such removal award costs to the defendant for one term, to be paid by the treasurer of state on presentation of the certificate of the amount thereof, from the clerk of courts of the county from which said action is transferred.]

**Proceedings when Estate Liable to Pay Inheritance Tax is not Before Probate Court within Six Months.**

S. 87. [As added by 1905, c. 124; amended by 1909, c. 187, s. 1.] If, upon the decease of a person leaving an estate liable to pay an inheritance tax, a will disposing of such estate is not offered for probate, or an application for administration made within six months after such decease, the proper probate court upon application by the attorney general, shall appoint an administrator for such estate, and it shall be the duty of the attorney general, when such case is brought to his attention to petition for administration on such estate and the judge in his discretion may appoint such attorney general or other suitable person as such administrator, and said attorney general shall be entitled to costs as in other probate proceedings.

**Penalty for Neglect or Refusal to File Inventory of Estate.**

S. 88. [As added by 1909, c. 187, s. 7 and amended by St. 1911, c. 163.] If any executor, administrator or trustee neglects or refuses to file an inventory of the estate under his charge within three months from the date of the warrant of appraisal, unless such time be extended by the judge of probate, he shall be cited to file such inventory by the judge of probate and if he neglects or refuses to file such inventory within sixty days thereafter he shall be liable to a penalty of not more than five hundred dollars which shall be recovered in an action of debt by the attorney general for the use of the state and the register of probate shall notify the attorney general of the failure of any executor, administrator or trustee to file an inventory as above provided.

**Property of a Deceased Resident of This State, Subject to Taxation in Another State, Not Liable to Taxation in This State. — Property of Non-Resident Decedent.**

S. 89. [As added by 1909, c. 187, s. 7.] Property belonging to a deceased resident of this state which shall be distributed by order of the probate court subsequent to the passage of this act, and which is not therein at the time of his death shall not be taxable under the provisions of this chapter if legally subject in another state or country to a tax of like character and amount to that imposed by section sixty-nine and if such tax be actually paid or guaranteed or secured in accordance with the law of such other state or country; if legally subject in another state or country to a tax of like character, but of less amount than that imposed by section sixty-nine and such tax be actually paid, guaranteed or secured as aforesaid, such property shall be taxable under the provisions of section sixty-nine to the extent of the difference between the tax thus actually paid, guaranteed or secured and the amount for which such property would otherwise be liable under this chapter. Property of non-resident decedent which is within the jurisdiction of the state at the time of his death, if subject to a tax by the law of the state or country of his residence, of like character with that imposed by this chapter, shall be subject only to such portion of the tax imposed hereunder as may be in excess of such tax imposed by the laws of such state or country.

**Reports by City and Town Clerks.**

S. 90. [Added by the Statute of 1911.] Clerks of cities and towns shall report to the attorney general the names of all persons dying within their respective municipalities who in the judgment of said clerks leave estates the value whereof exceeds five hundred dollars, together with the names of husband, wife and next of kin so far as known to him; such report shall be mailed to the attorney general within ten days of the time when the certificate of death is filed with such clerk, and a fee of twenty-five cents shall be paid said clerk by the state therefor. The attorney general shall prepare and furnish blanks for such returns.

**Corporations Incorporated in Two or More States.**

S. 91. [Added by the Statute of 1911.] When the personal estate passing from any person, not an inhabitant or resident of this state, as provided in section sixty-nine of chapter eight of the revised statutes, shall consist in whole or in part of shares of any railroad, or street railway company or telegraph or telephone company incorporated under the laws of this state and also of some other state or country, so much only of each share as is proportional to the part of such company's lines lying within this state shall be considered as property of such person within the jurisdiction of this state for the purposes of this chapter.

The courts of Massachusetts and New York had already reached this eminently just result without statutory aid. See *ante*, p. 170.

**Tax on Stock, etc., Limited to Corporations Having \$1,000 of Property in Maine.**

S. 92. [Added by the Statute of 1911.] When the personal estate passing from any deceased person not an inhabitant or resident of this state, as provided in section sixty-nine, shall consist of the stocks, bonds or other debt or certificate of indebtedness of any corporation organized under the laws of Maine, no collateral inheritance tax shall be assessed upon the same unless said corporation shall at the time of such decease have tangible property within the state exceeding one thousand dollars in value. The attorney general, upon satisfactory evidence and payment of a fee of five dollars to the use of the state shall file a certificate in the office of the secretary of state that any such corporation has not tangible property within the state exceeding one thousand dollars in value. Such certificate may at any time after notice and upon satisfactory evidence, be revoked. A copy of the certificate of revocation shall be sent to the clerk, and to any stock registrar or transfer agent whose name is on file with said secretary. Until the receipt of such certificate of revocation any such stock registrar or transfer agent may lawfully transfer the stock of said corporation and perform all other duties incident to his office.

This provision seems to be unique and is evidently intended as an inducement to non-residents to incorporate in Maine.

**Fiduciaries and Corporations Liable for Tax on Transfer of Stock of Non-Residents.**

S. 93. [Added by the Statute of 1911.] Subject to the provisions of section ninety-two if a foreign executor, administrator or trustee assigns or transfers

any stock in any national bank located in this state or in any corporation organized under the laws of this state, owned by a deceased non-resident at the date of his death and liable to a tax under the provisions of this chapter, the tax shall be paid to the attorney general at the time of such assignment or transfer; and if it is not paid when due, such executor, administrator or trustee shall be personally liable therefor until it is paid. Subject to the provisions of section ninety-two a bank located in this state or a corporation organized under the laws of this state which shall record a transfer of any share of its stock made by a foreign executor, administrator or trustee, or issue a new certificate for a share of its stock at the instance of a foreign executor, administrator or trustee before all taxes imposed thereon by the provisions of this chapter have been paid, shall be liable for such tax in an action of debt brought by the attorney general.

This closes an obvious loophole in the Maine law. Prior to the passage of this statute corporations might transfer stock without liability although it had been the practice of large corporations to require the assent of the Maine tax officers before doing so.

S. 94. [Added by the Statute of 1911.] Subject to the provisions of section ninety-two no person or corporation shall deliver or transfer any securities or assets belonging to the estate of a non-resident decedent to anyone unless authority to receive the same shall have been given by a probate court of this state, and upon satisfactory evidence that all inheritance taxes provided for by this chapter have been paid, guaranteed or secured as hereinbefore provided. Any person or corporation that delivers or transfers any securities or assets in violation of the provisions of this section shall be liable for such tax in an action of debt brought by the attorney general.

#### **Proceedings by the Attorney General.**

S. 95. [Added by the Statute of 1911.] The attorney general shall promptly commence proceedings for the recovery of any of said taxes within six months after the same became payable; and shall commence the same when the judge of a probate court certifies to him that the final account of an executor, administrator or trustee has been filed in such court, and that the settlement of the estate is delayed because of the non-payment of said tax. The judge of the probate court shall so certify upon the application of any heir, legatee or other person interested therein, and may extend the time of payment of said tax whenever the circumstances of the case require.

#### **Not Retroactive.**

S. 96. [Added by the Statute of 1911.] This act shall not apply to estates of persons deceased prior to the date of taking effect of the same, nor to property passing by deed, grant, sale or gift made prior to said date, but said estates and property shall remain subject to the provisions of law in force prior to the taking effect of this act.

[See notes to the Act of 1893, *ante*, p. 534.]

#### **Payment to State Treasurer.**

S. 97. [Added by the Statute of 1911.] All moneys received by the attorney general as taxes collected under the provisions of this chapter shall be by him forthwith paid to the state treasurer.

## MARYLAND.

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### In General.

Maryland adopted a collateral inheritance tax in 1845. The present tax is on collateral inheritances only; the rate is uniformly 5 per cent with an exemption of \$500, which applies to the estate as a whole, not to individual shares. No tax is levied on an inheritance to father, mother, husband, wife, child or lineal descendant. The commissions of executors are also subject to tax.

It would seem that Maryland formerly attempted to tax shares of Maryland corporations owned by non-residents, but they are not now considered taxable. Securities of a non-resident deposited in Maryland for safekeeping are taxable.

### Constitutional Limitations.

**Maryland Constitution 1864, Declaration of Rights.** Ratified October 12 and 13, 1864.

A. 15. That the levying taxes by the poll is grievous and oppressive, and ought to be prohibited; that paupers ought not to be assessed for the support of the government; but every other person in the state, or persons holding property therein, ought to contribute his proportion of public taxes for the support of government, according to his actual worth in real or personal property; yet fines, duties or taxes may properly and justly be imposed or laid, with a political view, for the good government and benefit of the community.

[This provision is embodied in the constitution of 1867.]

### List of Statutes.

1844. Statutes of Maryland, c. 184.

1844. " " " c. 237.

1845-46. " " " c. 71.

1845-46. " " " c. 391.

1846-47. " " " c. 344.

1847-48. " " " c. 222.

1847-48. " " " c. 230.

1849-50. " " " c. 447.

1860. Maryland Code, Vol. 1, a. 81, ss. 106 to 114, 124 to 148.

- 1862. Statutes of Maryland, c. 18.
- 1862. " " " c. 157.
- 1864. " " " c. 200.
- 1864. " " " c. 372.
- 1865. " " " c. 127.
- 1868. " " " c. 196.
- 1874. " " " c. 483.
- 1878. Revised Code of Maryland, p. 117, ss. 104 to 125, inclusive.
- 1880. " " " " c. 444.
- 1880. " " " " c. 455.
- 1888. Public General Laws of Maryland, Vol. 2, a. 81, ss. 97 to 125.
- 1890. Statutes of Maryland, c. 249.
- 1892. " " " c. 473.
- 1892. " " " c. 564.
- 1894. " " " c. 493.
- 1898. Supplement to Public General Laws (1890-1898), p. 536, ss. 115 a., 120 and 124.
- 1904. Statutes of Maryland, c. 222.
- 1904. Public General Laws of Maryland, Vol. 2, p. 1835.
- 1908. Statutes of Maryland, c. 695.

### History of Legislation.

Collateral inheritances were first taxed for revenue to the state by Md. St. 1844, c. 237. *Banks v. State*, 60 Md. 305.

The Maryland collateral inheritance tax was passed in 1844, chapter 237, and its constitutionality was never questioned until *Tyson v. State*, 28 Md. 577.

### Tax on Commissions of Executors.

Md. St. 1844, passed February 22, 1845, c. 184, s. 1, provides that commissions to executors and administrators shall be subject to a tax of ten per cent. Sections 2, 3, 4, 5 and 6, provide for the assessment and collection of this tax.

#### *Retroactive.*

Where the testator died March 27, 1845, the court holds that the commissions of the trustees were subject to a tax of 10 per cent in favor of the state, imposed by the act of 1844, chapter 184, which went into effect June 2, 1845. *Williams v. Mosher*, 6 Gill (Md.) 454.

Md. St. 1845, c. 391, passed March 10, 1846, gives the orphans' courts jurisdiction to fix and determine the commission which shall be allowed executors; and provides further for inventories and a determination of the tax on commissions allowed to executors and administrators.

Md. St. 1847, c. 230, passed March 9, 1848, provides that in every case the court shall fix the amount of commission to which the executor is by law entitled and shall impose a tax upon it whether the executor claims the commission or not.

Md. St. 1849, c. 447, passed March 9, 1850, extends the provisions of Md. St. 1844, c. 184, to cases where non-residents die owning Maryland stock or bonds.

Md. Code 1860, a. 81, ss. 106 to 114, codify existing statutes.

Md. St. 1860, c. 163, provides that where the executor renounces his commission he shall not be taxed thereon.

*Retroactive.*

Where this statute was enacted before the passage of the executor's account, the executor having renounced his commission was not liable to the state tax of ten per cent on such commissions. *Owings v. State*, 22 Md. 116.

Md. St. 1861-62, c. 18, passed January 6, 1862, amends Md. Code, a. 81, s. 107, as to the commissions of executors to be fixed by the orphans' courts.

Md. St. 1864, c. 372, passed March 7, 1864, amends Md. Code, a. 81, s. 106, providing that commissions allowed to executors or administrators shall be subject to a tax of five per cent; and where a legacy is left to an executor by way of compensation such legacy shall be reckoned in the commissions fixed by the court.

Md. St. 1865, c. 127, passed March 24, 1865, amends Md. Code, a. 81, s. 106, by increasing the tax on commissions to executors or administrators to ten per cent.

Md. Code of 1888, a. 81, ss. 97 to 99, continues the tax on the commissions of executors.

Sections 97 to 99 of article 81 of the code of 1888, do not authorize the orphans' court to allow commissions where the executor is given a legacy in lieu of commissions larger than the commissions would amount to. *Renshaw v. Williams*, 75 Md. 498.

There is no tax on commissions of the administrator in Maryland with respect to a fund which had been paid to the foreign executor before the administrator was appointed in Maryland, as he was not entitled to commissions thereon. *Citizens' Nat. Bank v. Sharp*, 53 Md. 521.

Public General Laws of Maryland of 1904, a. 81, ss. 112 to 116, imposes a tax on commissions allowed to executors or administrators of ten per cent.



**Md. St. 1904, c. 222. Approved April 1, 1904.**

**AN ACT TO REPEAL AND RE-ENACT with amendments sections 113, 114, 115 and 116 of article 81 of the Code of Public General Laws, title, "Revenue and Taxes," sub-title, "Collateral Inheritance Tax."**

S. 1. Be it enacted by the General Assembly of Maryland, That sections 113, 114, 115 and 116 of article 81 of the Code of Public General Laws, title "Revenue and Taxes," sub-title "Collateral Inheritance Tax," be and the same are hereby repealed and re-enacted so as to read as follows: —

S. 113. The amount of said tax shall be a lien on said real estate for the period of four years from the date of the death of the decedent, who shall have died seized and possessed thereof.

S. 114. The executor or administrator shall collect the same from the parties liable to pay said tax or their legal representatives within thirteen months from the date of his administration, and pay the same to the register of wills of the county or city in which administration is granted; and if the said parties shall neglect or fail to pay the same within that time, the orphans' court of the said county or city shall order the executor or administrator to sell for cash so much of said real estate as may be necessary to pay said tax and all the expenses of said sale, including the commissions of the executor or administrator thereon; and after the report of said sale, the ratification thereof and the payment of the purchase money, the executor or administrator may execute a valid deed for the estate sold, and not before; provided, however, that nothing in this section contained shall be construed to confer authority on the orphans' court to order the sale of any real estate for the satisfaction of collateral inheritance tax after the expiration of four years from the date of the death of the decedent, who shall have died seized and possessed of said real estate.

S. 115. Whenever any estate, real, personal or mixed, of a decedent shall be subject to the tax mentioned in the thirteen preceding sections, and there be a life estate or interest for a term of years, or a contingent interest, given to one party and the remainder, or reversionary interest to another party, the orphans' court of the county or city in which administration is granted shall determine in its discretion and at such time as it shall think proper what proportion the party entitled to said life estate, or interest for a term of years, or contingent interest, shall pay of said tax, and the judgment of said court shall be final and conclusive, and the party entitled to said life estate or interest for a term of years, or other contingent interest, shall within thirty days after the date of such determination, pay to the register of wills his proportion of said tax; and thereafter the said court shall from time to time, after the determination of the preceding estate and as the remainder of said estate shall vest in the party or parties entitled in remainder or reversion, determine in its discretion what proportion of the residue of said tax shall be paid by the party or parties in whom the estate shall so vest; and the judgment of the said court shall be final and each of the parties successively entitled in remainder or reversion shall pay his proportion of said tax to the register of wills within thirty days after the date of such determination as to him; and the proportion of the tax so determined to be paid by the party entitled to the life interest or estate shall be and remain a lien upon such interest or estate for the period of four years after the date of the death of the decedent, who shall

have died seized and possessed of the property; and the proportion of the tax so determined to be paid by the persons respectively entitled to the remainder or reversionary interest, shall be a lien on such interest for the period of four years from the date of which such interest shall vest in possession.

S. 116. If any of the parties mentioned in the last preceding section shall refuse or neglect to pay the several proportions so decreed by the orphans' court within thirty days from the time of such decree, the court shall order and direct the executor or administrator to sell all the right, title and interest of such party in and to said estate or property, or so much thereof as the court may deem necessary, to pay his proportion of said tax and all expenses of sale; provided, however, that nothing in this section contained shall be construed to confer authority on the orphans' court to order the sale for the satisfaction of collateral inheritance tax of any life interest after the expiration of four years from the date of the death of the decedent, who shall have died seized and possessed of the property, or of any remainder or reversionary interest after the expiration of four years from the date at which such interest shall vest in possession.

S. 2. And be it enacted, That this act shall be retroactive in its operation and shall take effect from the date of its passage.

### **The Inheritance Statutes.**

**Md. St. 1844.** Passed February 26, 1845, c. 237.

S. 1. Be it enacted by the General Assembly of Maryland, That from and after the first day of June next, all estates, real, personal and mixed, money, public and private securities for money, of every nature and kind whatsoever, passing from any person who may die seized and possessed thereof, being in this state, either by will or under the intestate laws of this state, or any part of such estate, or estates, money, or securities as aforesaid, or interest therein, transferred by deed, grant, bargain, gift or sale, made or intended to take effect in possession or enjoyment after the death of the grantor, bargainor, deviser or donor, to any person or persons, or bodies politic or corporate, in trust or otherwise, other than to or for the use of the father, mother, wife, children and lineal descendants, born in lawful wedlock, of the grantor, bargainor, deviser, donor or intestate shall be and they are hereby made subject to a tax or duty of two and one-half per centum on every hundred dollars of the clear value of such estate or estates, or money or securities as aforesaid, to be paid to the use of this state; and all executors and administrators and their sureties, shall only be discharged from liability of the amount of such tax, the payment of which they may be charged with, by paying the same over for the use of this state, as hereinafter directed; provided, that no estate which may be valued at a less sum than five hundred dollars, shall be subject to the duty or tax aforesaid.

### **Constitutionality.**

This statute is not repugnant to the fifteenth article of the declaration of rights of the constitution of 1864. The court finds that this article did not engraft upon fundamental law any new

principle of taxation, but that this same provision is to be found in every constitution adopted in Maryland from 1776 down. While this article provided for a *uniform* mode of taxation on property it was not the purpose of the friends of the constitution to prohibit any other species of taxation but to leave the legislature power to impose such other taxes as the necessities of the government might require. The fact that the collateral inheritance tax was understood to be legal under the constitution by the convention which framed it is significant. *Tyson v. State*, 28 Md. 577.

### **Manumission of Slave. — Taxable.**

The manumission or bequest of freedom to a slave by last will and testament confers on such slave the identical rights which would pass if the testator had bequeathed the same slave to another person, and therefore the bequest of freedom is a legacy on which the executor is liable to pay a tax on the appraised value of the slave. *State v. Dorsey*, 6 Gill (Md.) 388.

The court on the petition of a manumitted slave affirms the case of *State v. Dorsey*, 6 Gill (Md.) 388, to the effect that a manumission of a slave is a legacy and as such subject to the inheritance tax. The court bases its decision on the theory that a large part of the personal property in the state consists of slaves, which should pay their share of the taxes. *Spencer v. Negro Dennis*, 8 Gill (Md.) 314.

St. 1844, c. 237, s. 2, covers the collection of the tax. Section 3 provides that all money collected by the register shall be paid to the state treasurer. Section 4 provides that the levy courts shall take an account of all real estate subject to the inheritance tax. Section 5 provides that the tax shall be a lien on real estate. Section 6 provides for an oath by the administrators to comply with the statute.

Md. St. 1845, c. 71, s. 3, passed January 31, 1846, requires the register of wills to pay over to the state treasury all money received by him under the Md. St. 1844, chaps. 184, 187, 237, every six months.

Md. St. 1845, c. 202, s. 1, passed March 2, 1846, imposes the duty on the executors to pay the tax imposed by Md. St. 1844, c. 237. Section 2 provides that where real estate is liable for the tax the orphans' court shall issue a notice to the parties entitled. Section 3 covers penalties for neglect to pay. Section 4 provides for a lien. Section 5 covers the duty of the registers to account for moneys collected.

Md. St. 1846, c. 344, passed March 10, 1847, provides that the orphans' court shall determine the apportionment of tax where there is a particular estate and a remainder. It further provides that the tax shall be a lien, and that the executor shall take oath to comply with the law.

Md. St. 1847, c. 22, passed March 8, 1848, provides particularly for the collection of the tax imposed by Md. St. 1844, c. 237, and covers the matter of inventories and appraisals and procedure for collection of the tax.

Md. Code 1860, a. 81, ss. 124 to 148, codifies the existing law.

**Md. Code 1860, a. 81, s. 137.**

Whenever any estate, real, personal or mixed, of a decedent shall be subject to the tax mentioned in the preceding section, and there be only a life estate, or an interest for a term of years, or a contingent interest given to one party, and the remainder or reversionary interest to another, the orphans' court of the county or city in which administration is granted, shall determine in its discretion, and at such time as it shall think proper, what proportion each party who may be thus interested in said estate or property shall pay of said tax; and the judgment of the said court shall be final and conclusive; and every such party shall pay to the register of wills his proportion of said tax within thirty days after the date of such determination; and any party entitled in remainder or reversion, shall be required to pay his proportion within the same time as if his interest had vested in possession.

**Jurisdiction of Court.**

Under Md. St. 1844, and s. 137, a. 81 of the Code, the orphans' court should properly determine what proportion each party who may be interested in an estate shall pay of the tax by it imposed. *Tyson v. State*, 28 Md. 577.

Md. St. 1862, c. 157, passed March 3, 1862, provides that the clerks and registers of wills shall pay inheritance taxes to the state treasurer, deducting for themselves a commission of five per cent.

Md. St. 1864, c. 200, passed March 7, 1864, amends Md. Code, 1860, a. 81, ss. 124 and 125, by reducing the tax to one and one-half per cent.

Md. St. 1868, c. 196, approved March 28, 1868, amends Md. Code, a. 81, ss. 146 and 147.

Md. St. 1874, c. 483, approved April 11, 1874, repeals Md. Code, a. 81, and re-enacts the same with amendments. Section 113, imposes a collateral inheritance tax of two and one-half per cent on every hundred dollars of the clear value of all estates, provided that no estate which is valued at less than five hundred dollars shall be subject to tax. Cited in *Montague v. State*, 54 Md. 481.

**Md. Code 1878, a. 11, s. 117.**

Whenever any estate, real, personal, or mixed, of a decedent shall be subject to the tax mentioned in the preceding section, and there be only a life estate, or an interest for a term of years, or a contingent interest given to one party, and the remainder or reversionary interest to another, the orphans' court of the county or city in which administration is granted shall determine, in its discretion, and at such time as it shall think proper, what proportion each party who may be thus interested in said estate or property shall pay of said tax; and the judgment of the said court shall be final and conclusive; and every such party shall pay to the register of wills his proportion of said tax within thirty days after the date of such determination, and any party entitled in remainder or reversion shall be required to pay his proportion within the same time as if his interest had vested in possession.

Md. St. 1880, c. 44, approved April 14, 1880, amends Md. St. 1874, c. 483, s. 113, by adding surviving husbands to the exempt class.

**Release by Statute Retroactive.**

The act of 1880, c. 444, declared that the collateral inheritance tax shall not be imposed where property may pass from a deceased wife to her surviving husband; and that in all cases where such a tax has been "heretofore claimed of but not actually paid by the husband" of any decedent such claim shall be released or abandoned. The court says this is not exactly an exemption, but a release, and so does not fall within the rule that exemptions are to be strictly construed. The law is valid and the statute applied to a case which was pending on appeal when the law was passed. *Montague v. State*, 54 Md. 481.

**Validity of Release by Statute.**

This statute was not void on the ground that it was a release of taxes and that under Md. Const. a. 3, s. 33, it did not appear upon the face of the act that the release had been recommended by the governor or officers of the treasury department and that the act did not provide that such recommendation shall be obtained before the release shall take effect. The court replies to this claim that the constitution provides that the general assembly shall not pass any local or special laws of that character, that the release of debts or obligations to the state is a public general law not forbidden by the constitution. *Montague v. State*, 54 Md. 481.

Md. St. 1880, c. 455, approved April 14, 1880, provides that when there is a particular estate and estates in remainder the tax shall be paid only as the remainder shall vest in the parties entitled.

Md. Code 1888, a. 81, ss. 102 to 125, codifies existing law.

S. 102. All estates, real, personal and mixed, money, public and private securities for money of every kind passing from any person who may die seized and possessed thereof, being in this state, or any part of such estate or estates, money or securities, or interest therein, transferred by deed, will, grant, bargain, gift or sale, made or intended to take effect in possession after the death of the grantor, bargainor, deviser or donor, to any person or persons, bodies politic or corporate, in trust or otherwise, other than to or for the use of the father, mother, husband, wife, children and lineal descendants of the grantor, bargainor, testator, donor or intestate, shall be subject to a tax of two and a half per centum on every hundred dollars of the clear value of such estates, money or securities; and all executors and administrators shall only be discharged from liability for the amount of such tax, the payment of which they may be charged with, by paying the same for the use of this state, as hereinafter directed; provided, that no estate which may be valued at a less sum than five hundred dollars, shall be subject to the tax imposed by this section.

The words "being within this state" in Md. Code 1888, a. 81, s. 102, refer to the situation of the estate, not to the mere accidental residence of the owner, as in Pennsylvania the words in a similar statute, "being within this commonwealth," had reference to the property and not to the person of the resident. *Commonwealth v. Smith*, 5 Pa. St. 142; *In re Short*, 16 Pa. St. 63.

These words include the property of non-residents actually situated in Maryland at the date of death. So where a resident of California died shortly after the death of his brother who resided in Maryland and the estate of the Californian is entitled to certain securities and other property from the estate of the resident of Maryland, this property, so far as it went to collaterals, was subject to tax. *State v. Dalrymple*, 70 Md. 294, 301, 17 A. 82, 3 L. R. A. 372.

### **Property of Non-Residents. — Beneficiaries.**

The court holds that personal property of a non-resident actually situated in Maryland at the date of the death of the decedent is subject to a Maryland inheritance tax so far as the personal property goes to relations who are liable for the tax under the Maryland statute. The court in this case did not need to consider and did not consider the question of the division of the property as to whether the particular property in Maryland actually went to a collateral or to a direct descendant, as in this case the will gave the whole of the personal property to a collateral, so that the property in question was clearly subject to the tax. *State v. Dalrymple*, 70 Md. 294, 17 A. 82, 3 L. R. A. 372.

**Power of Legislature.**

The state in allowing property actually located here or personal property situated elsewhere but owned by a resident to be disposed of by will, and in designating who shall take such property where there is no will, may prescribe such conditions as the legislature may deem expedient. *State v. Dalrymple*, 70 Md. 294, 17 A. 82, 3 L. R. A. 372.

Md. St. 1890, c. 249, exempts from the inheritance tax a certain legacy to a home for aged women which the testator intended to endow for its permanent support and maintenance, but which sudden death prevented him from doing, so that the home was left destitute.

Md. St. 1892, c. 473, approved April 7, 1892, amends Md. Code, a. 81, s. 120, as to a summons to persons interested in an inheritance tax.

Md. St. 1892, c. 493, approved April 6, 1894, provides for taxation of an interest less than an absolute interest.

Md. St. 1892, c. 564, approved April 7, 1892, amends Md. Code, a. 81, s. 124, as to the commissions of clerks and registers of wills.

Md. St. 1908, c. 695. Approved April 8, 1908.

AN ACT TO REPEAL AND RE-ENACT with amendments sections 117 and 140 of article 81 of the Code of Public General Laws of Maryland, title "Revenue and Taxes," sub-title, "Collateral Inheritance Tax."

**THE PRESENT ACT.**

**Public General Laws of Maryland (1904), a. 81, s. 117.** [As amended by Md. St. 1908, c. 695.]

**Transfers Taxable.**

S. 117. All estates, real, personal and mixed, money, public and private securities for money of every kind passing from any person who may die seized and possessed thereof, being in this state, or any part of such estate or estates, money or securities, or interest therein, transferred by deed, will, grant, bargain, gift or sale, made or intended to take effect in possession after the death of the grantor, bargainor, devisor or donor, to any person or persons, bodies politic or corporate, in trust or otherwise, other than to or for the use of the father, mother, husband, wife, children and lineal descendants of the grantor, bargainor or testator, donor or intestate, shall be subject to a tax of five per centum in every hundred dollars of the clear value of such estates, money or securities; and all executors and administrators shall only be discharged from liability for the amount of such tax, the payment of which they be charged with, by paying the same for the use of this state, as hereinafter directed; provided, that no estate which may be valued at a less sum than five hundred dollars shall be subject to the tax imposed by this section.

As to the constitutionality of the statute see notes to the Act of 1844, *ante*, p. 546.

As to a tax on the manumission of a slave see notes to the Act of 1844, *ante*, p. 550.

### **Situs of Debt.**

No collateral inheritance tax is payable in Maryland on the fund paid by a debtor in Maryland to his creditor's executor where the testator was domiciled in another state, the executor was appointed in that other state and payment was made before any administration had been granted in Maryland. *Citizens' Bank v. Sharp* (1879), 53 Md. 521.

### **"Clear Value" on Death.**

Where a Maryland testator died leaving his property in trust for the life tenant and on her death to be disposed of as she might by will direct, and the life tenant did leave property by will, the inheritance tax on her death should be reckoned on the value of the property at that time, although it had doubled in value while in the hands of the trustees. The court holds that Md. Code, a. 81, s. 117, provides that the tax is imposed upon the clear value of all estates at the time of transfer or receipt by the collateral beneficiary. *Fisher v. State*, 106 Md. 104, 66 A. 661.

### **Absence of Provisions for Ascertainment and Recovery of Tax is not Fatal.**

The court holds that the manifest intention of the legislature was to tax the transmission of all property to collaterals situated in the state as provided by the statute and that the fact that the statute does not contain special provision for the ascertainment and collection of the tax cannot defeat the state's right to a recovery. *Fisher v. State*, 106 Md. 104, 66 A. 661.

### **"Being in This State."**

See notes to the Code of 1888, *ante*, p. 553.

### **Powers.**

Where property is given by deed in trust providing that the *cestui*, being the life tenant, shall have the right to dispose of the fund by will, the transfer by will of the life tenant is not liable to the collateral inheritance tax under the provisions of Md. Code,



a. 81, s. 117, *et seq.* The court holds that the description in the Code does not include the property involved under the deed of trust. *Gallard v. Winans*, 111 Md. 434, 472, 74 A. 626.

### **Laid on Trustee and not Cestui.**

The collateral inheritance tax is properly laid upon the trustee holding the property rather than upon the *cestui*. *Tyson v. State*, 28 Md. 577.

### **Deduction of Tax.**

S. 118. Every executor or administrator, to whom administration may be granted, before he pays any legacy, or distributes the shares of any estate liable to the tax imposed by the preceding section, shall pay to the register of wills of the proper county or city, two and a half per centum of every hundred dollars he may hold for distribution among the distributees or legatees, and at that rate for any less sum, for the use of the state; this section shall not be construed so as to release any tax already fixed on any collateral inheritance, distributive share or legacy.

### **Action Against Legatee.**

If an administrator or executor actually pays over money of his decedent to a collateral distributee or legatee without retaining therefrom a tax it becomes to the extent of the tax money had and received by him for the use of the state, and an action may be maintained against such distributee or legatee therefor. *Montague v. State* (1879), 54 Md. 481, 487.

### **Tax on Appraised Value. — Power of Sale.**

S. 119. When any species of property other than money or real estate shall be subject to said tax, the tax shall be paid on the appraised value thereof as filed in the office of the register of wills of the proper county or city; and every executor shall have power, under the order of the orphans' court, to sell, if necessary, so much of said property as will enable him to pay said tax.

### **When Tax Payable.**

S. 120. Every executor or administrator shall, within thirteen months from the date of his administration, pay said tax on distributive shares and legacies in his hands, and on failure to do so he shall forfeit his commissions.

### **Appraisers of Real Estate.**

S. 121. In all cases where real estate of any kind is subject to the said tax, the orphans' court of the county in which administration is granted shall appoint the same persons who may have been appointed to value the personal estate to appraise and value all the real estate of the deceased within the state.

**Warrant and Oath of Appraisers.**

S. 122. The form of the warrant to such appraisers shall be the same as to appraisers of personal property, except that the words "real estate" shall be inserted therein instead of the words "goods, chattels and personal estate," and the words "price of property" instead of the word "article," and the appraisers shall take the oath prescribed for appraisers of personal estate, except that the words "real estate" shall be substituted for the words "goods, chattels and personal estate," and their duties and proceedings shall, in every respect, be the same as those of the appraisers of personal estate.

**Appraisers in Different Counties.**

S. 123. If the estate or property lies in more than one county, and it is not convenient for the appraisers to visit the other county, the court may appoint two appraisers in said county.

**Inventory of Real Estate.**

S. 124. The inventory of the real estate shall be entirely separate and distinct from that of the personal estate.

**Vacancy among Appraisers.**

S. 125. On the death or refusal of any appraiser to act, the court may appoint another in his place.

**Proceedings on Inventory.**

S. 126. The appraisers shall return the inventory, when completed, to the executor or administrator, whose duty it shall be to return the same to the office of the register of wills, to which the inventory of the personal estate is returnable, and within the same time and under like penalty, and shall make oath that said inventory or inventories is or are a true and perfect inventory or inventories of all the real estate of the deceased, within this state, that has come to his knowledge and that, should he thereafter discover any other real estate belonging to the deceased, in this state, he will return an additional inventory thereof.

**Appraisement to be Deemed True Value.**

S. 127. The appraisement thus made shall be deemed and taken to be the true value of the said real estate upon which the said tax shall be paid.

**Lien.**

S. 128. The amount of said tax shall be a lien on said real estate for the period of four years from the date of the death of the decedent, who shall have died seized and possessed thereof.

**Payment. — Sale of Real Estate.**

S. 129. The executor or administrator shall collect the same from the parties liable to pay said tax or their legal representatives within thirteen months from the date of his administration, and pay the same to the register of wills of the county or city in which administration is granted; and if the said parties shall neglect or fail to pay the same within that time, the orphans' court of the said

county or city shall order the executor or administrator to sell for cash so much of said real estate as may be necessary to pay said tax and all the expenses of said sale, including the commissions of the executor or administrator thereon; and after the report of said sale, the ratification thereof and the payment of the purchase money, the executor or administrator may execute a valid deed for the estate sold, and not before; provided, however, that nothing in this section contained shall be construed to confer authority on the orphans' court to order the sale of any real estate for the satisfaction of collateral inheritance tax after the expiration of four years from the date of the death of the decedent, who shall have died seized and possessed of said real estate.

#### **Particular Estates and Remainders.**

S. 130. Whenever any estate, real, personal or mixed, of a decedent shall be subject to the tax mentioned in the thirteen preceding sections, and there be a life estate or interest for a term of years, or a contingent interest, given to one party and the remainder or reversionary interest, to another party, the orphans' court of the county or city in which administration is granted shall determine in its discretion and at such time as it shall think proper what proportion the party entitled to said life estate, or interest for a term of years, or contingent interest, shall pay of said tax, and the judgment of said court shall be final and conclusive, and the party entitled to said life estate or interest for a term of years, or other contingent interest, shall within thirty days after the date of such determination pay to the register of wills his proportion of said tax; and thereafter the said court shall from time to time after the determination of the preceding estate and as the remainder of said estate shall vest in the party or parties entitled in remainder or reversion determine in its discretion what proportion of the residue of said tax shall be paid by the party or parties in whom the estate shall so vest; and the judgment of the said court shall be final and each of the parties successively entitled in remainder or reversion shall pay his proportion of said tax to the register of wills within thirty days after the date of such determination as to him; and the proportion of the tax so determined to be paid by the party entitled to the life interest or estate shall be and remain a lien upon such interest or estate for the period of four years after the date of the death of the decedent, who shall have died seized and possessed of the property; and the proportion of the tax so determined to be paid by the persons respectively entitled to the remainder, or reversionary interest, shall be a lien on such interest for the period of four years from the date of which such interest shall vest in possession.

S. 131. Whenever an interest in any estate, real, personal or mixed, less than an absolute interest, shall be devised or bequeathed to or for the use and benefit of any person or object not exempted from the tax under section 117, then only such interest so devised or bequeathed shall be liable for said tax; and it shall be the duty of the orphans' court of the county or city in which administration is granted, or any other court assuming jurisdiction over such administration, to determine as soon after administration is granted as possible, on application of such person or object, the value of such interest liable for said tax, by deducting from the whole value of the estate so much thereof as shall be the value of the interest therein, of any person who under said section 117, is exempt from said tax, and the residue thereof shall be the value of said interest upon which said tax is payable; and said tax so ascertained shall be paid by such person or object

within ninety days from such ascertainment, with interest thereon at six per cent per annum, after the expiration of twelve (12) months from the date of the death of the decedent, under whose will or by whose intestacy said interest is acquired, if said tax has not sooner been paid, or within ninety days from the time that it shall be ascertained that such person or object shall be entitled to any such interest in any estate; but such tax shall bear interest at the rate of six per cent per annum from the expiration of twelve (12) months from said death; but if such person or object shall fail to pay said tax, as above provided, then such person or object shall at the time when he, she or it comes into possession of such estate, pay a tax as provided for in said section 117, on the whole value thereof

S. 132. If any of the parties mentioned in sections 129 and 130 shall refuse or neglect to pay the several proportions so decreed by the orphans' court within thirty days from the time of such decree, the court shall order and direct the executor or administrator to sell all the right, title and interest of such party in and to said estate or property, or so much thereof as the court may deem necessary, to pay his proportion of said tax and all expenses of sale; provided, however, that nothing in this section contained shall be construed to confer authority on the orphans' court to order the sale for the satisfaction of collateral inheritance tax of any life interest after the expiration of four years from the date of the death of the decedent, who shall have died seized and possessed of the property, or of any remainder or reversionary interest after the expiration of four years from the date at which such interest shall vest in possession. Sections 128, 129, 130 and 132 shall take effect from April 1, 1904, and be retroactive.

#### **Bonds of Executors, etc., Liable for Tax.**

S. 133. The bond of an executor or administrator shall be liable for all money he may receive under this article for taxes, or for the proceeds of the sales of real estate received by him thereunder.

#### **Revocation of Administration on Failure to Pay Tax.**

S. 134. If any executor or administrator shall fail to perform any of the duties imposed upon him by this article, the orphans' court of the county in which the administration was granted may revoke his administration, and his bond shall be liable, and the same proceedings shall be had against him as if his administration had been revoked for any other cause.

#### **Administrator de bonis.**

S. 135. The powers and duties of an administrator *de bonis non*, or with the will annexed, shall be the same under this article as those of an executor or administrator, and he shall be subject to the same liabilities.

#### **Summons. — Proceedings.**

S. 136. In all cases where any estate real, personal or mixed, shall be subject to the collateral inheritance tax imposed by this article and no administration is taken out on the estate of the person who died seized and possessed thereof, within ninety days after the death of said person the orphans' court of the county in which such administration should be granted shall issue a summons for the parties entitled to administration to show cause wherefore they do not administer; provided, however, that when any real estate shall be subject to said tax and no

administration has been taken on the estate of the person who died seized thereof, the orphans' court of the county where said real estate shall be situate may, on the application of any one interested in said real estate, appoint appraisers to value the same as provided by the preceding sections of this article, and the amount of said tax may be paid to the register of wills of the county where the said application shall be made.

#### **Where Parties Entitled do Not Administer.**

S. 137. If the parties entitled by law to administration do not administer within a reasonable time to be fixed by the said court, or if they be incapable, or being incapable if they decline or refuse to appear on proper summons or notice, administration shall be granted to such person as the court may deem proper

#### **Information as to Real Estate.**

S. 138. In all cases where application is made to the orphans' court or register of wills of any county or the city of Baltimore for letters testamentary or of administration, the said court or register shall inquire of the person making application whether he knows or believes that there is any real estate of the decedent liable to the collateral inheritance tax, and the answer of such applicant shall be given on oath if the court or register requires it.

#### **Duplicate Receipts.**

S. 139. The register of wills shall give to the person paying the collateral inheritance tax imposed by this article duplicate receipts for said tax, one of which shall be forwarded by said person to the treasurer to be by him preserved, and copies thereof shall be evidence in suit upon the bond of said register.

#### **Accounting and Fees of Clerks and Registers.**

S. 140. [As amended by St. 1908, c. 695.] It shall be the duty of the several clerks and the several registers of wills in this state to account with and pay to the treasurer on the first Monday of March, June, September and December in each and every year all sums of money received by them respectively, for which the clerks shall be allowed a commission of two and one-half per centum, and the register of wills shall be allowed a commission of twelve and one-half per centum upon the amount of said collateral inheritance tax, and the said clerks shall be allowed a commission of five per centum, and the register of wills shall be allowed a commission of twenty-five per cent upon the amount received of the tax on official commissions and executors' commissions respectively, so paid over.

#### **Compensation of Register.**

The register of wills in Maryland is not entitled to retain as extra compensation the five per cent commission allowed by law on the amount of taxes on collateral inheritances received by him, but by the Const. 1851 he is required to account for it as part of the income or receipts of the office. *Banks v. State* (1883), 60 Md. 305.

**Proceedings for Recovery.**

S. 141. If any of the said clerks or registers shall fail to account and pay over as required in the preceding section, the comptroller shall, in thirty days thereafter, give notice thereof to the state's attorney for the county or city whose duty it shall be to put the bond of such clerk or register in suit for the use of the state, in which suit a recovery shall be had for the amount appearing to be due, with interest at the rate of ten per cent per annum, from the date or dates when the same was payable as aforesaid, which recovery shall be evidence of misbehavior and upon conviction thereof the said clerk or register shall be removed from office, which shall thereupon be filled as prescribed by the constitution; and such failure on the part of any clerk or register shall amount to a forfeiture of the commission to which he would otherwise be entitled.

## MASSACHUSETTS.

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### In General.

Massachusetts first adopted a collateral inheritance tax in 1891, and a direct inheritance tax in 1907, which applies to estates of persons who have died since September 1, 1907.

Exemptions apply to each individual inheritance and not to the estate as a whole. In the case of a non-resident, the inheritance is taxable if the entire amount of the share passing is greater than the amount exempted, though the portion of the share in Massachusetts is less than the exempted amount; but in such case the tax is levied only on the portion of the inheritance subject to Massachusetts jurisdiction. For example, a non-resident leaves a child \$100,000, of which \$5,000 is stock in a Massachusetts corporation. Massachusetts taxes this \$50, one per cent on \$5,000.

It should be noted that the tax, where levied, is on the full amount without deducting the exemption. Thus a bequest of \$10,000 by a resident to a child would be taxed nothing, a bequest of \$20,000 would be taxed \$200, one per cent on the full \$20,000. But the tax must not reduce the inheritance below the exempted figure, so an inheritance of \$10,001 would pay only \$1.

Shares in voluntary associations, like Massachusetts Gas and Massachusetts Electric, and also shares in local real estate trusts, have been regarded by the tax commissioner as standing on the same footing as Massachusetts corporations, and have been taxed whether owned by a resident or non-resident. The right to collect such a tax on real estate trust shares is being contested in a case now pending in the supreme court.

A corporation that transfers stock, and a person or corporation that delivers over securities of a non-resident estate before the tax is paid, are made liable for the tax.

It is the practice of the tax commissioner's office to require an inventory of the entire estate of a non-resident, as the commissioner deems it necessary for a proper computation of the tax.

Massachusetts is one of the very few states that have made any attempt to avoid double taxation.

If personal property of a deceased resident, which is outside the state, has been taxed in other states — and this includes stock in

foreign corporations, whether the certificate is actually kept in Massachusetts or not — Massachusetts will not tax it, unless the outside tax is less than the Massachusetts tax, and then Massachusetts collects only the difference. This exemption has been extended in 1911 to shares owned by a resident, in a company incorporated in Massachusetts and other states.

The result is that at present, so far as the inheritance tax is concerned, for a Massachusetts investor, stocks in Massachusetts corporations are most desirable, stocks in corporations of states whose taxes are no heavier than Massachusetts are a second choice, while stocks in corporations of states whose taxes are heavier than Massachusetts are less desirable.

The attempt to avoid double taxation in the case of non-residents has as yet been of little practical value. There is a reciprocal clause in favor of non-residents owning stocks in Massachusetts corporations which provides that such stock shall not be taxed (except for the difference if Massachusetts rates are higher) if owned by a resident of a state which extends similar courtesies to residents of Massachusetts. There are only six other states to which by any possibility this could apply. It has been ruled that residents of Maine are entitled to the exemption; the same ruling is likely to be made when occasion arises as to Vermont, Kansas and New York. The attorney general has ruled that the retaliative provision in the Connecticut law does not satisfy the reciprocal requirements, and it is probable that the same ruling would be made as to West Virginia.

### Constitutional Limitations.

#### **Massachusetts Constitution 1780, pt. 2, c. 1, s. 1, a. 4.**

And further, full power and authority are hereby given and granted to the said general court, from time to time, . . . to impose and levy proportional and reasonable assessments, rates, and taxes, upon all the inhabitants of, and persons resident, and estates lying, within the said commonwealth; and also to impose and levy reasonable duties and excises upon any produce, goods, wares, merchandise and commodities, whatsoever, brought into, produced, manufactured or being within the same.

The privilege of transmitting or receiving by will or descent property on the death of the owner is a "commodity" within the meaning of this word in the Massachusetts constitution and an excise may be laid upon it. *Minot v. Winthrop*, 162 Mass. 113, 122, 38 N. E. 512, 26 L. R. A. 259 (Lathrop, J., dissenting).



### Right of Succession Cannot be Abolished.

"The descent or devolution of property on the death of the owner in England and in this country has always been regulated by law.

"The legislature cannot so far restrict the right to transmit property by will or by descent as to amount to an appropriation of property generally, . . . it cannot impose a tax which shall be equivalent, or almost equivalent, to the value of the property and cannot so limit the persons who can take as heirs, devisees, distributees or legatees that the great mass of all the property of the inhabitants must become vested in the commonwealth by escheat. The state can take property by taxation only for the public service, and we assume that its right to take property, if any exists, by regulating the distribution of it on the death of the owner, is limited in the same manner, and that this right must be exercised in a reasonable way." *Per* Field, C. J., in *Minot v. Winthrop*, 162 Mass. 113, 117, 38 N. E. 512, 26 L. R. A. 113.

It should be noted that this language is contrary to the great weight of authority in this country. See *ante*, p. 24. A note in 8 *Harvard Law Review*, p. 226, criticizes adversely the attitude of the court. The editor suggests that this statement is a dictum and that the only necessary incident of private property is that there be a succession of some kind on the death of the owner. Who shall succeed is quite a different question which has been answered differently at different times and places.

### List of Statutes.

1836-1853.	Supplement to Revised Statutes, c. 355.
1841.	" " " " c. 123.
1843.	" " " " c. 11.
1868.	Statutes of Massachusetts, c. 132.
1882-1887.	Public Statutes of Massachusetts, c. 24, s. 18.
1889-1895.	Supplement to Public Statutes, pp. 512 to 516, 642, 1386, 1430.
1891.	Statutes of Massachusetts, c. 425.
1892.	" " " " c. 379.
1893.	" " " " c. 432.
1895.	" " " " c. 307.
1895.	" " " " c. 430.
1896.	" " " " c. 108.
1900.	" " " " c. 371.
1901.	" " " " c. 277.
1901.	" " " " c. 297.
1902.	" " " " c. 473.
1903.	" " " " c. 248.
1903.	" " " " c. 251.
1903.	" " " " c. 276.

1904.	Statutes of Massachusetts,	c. 421.
1905.	" " "	c. 367.
1905.	" " "	c. 470.
1906.	" " "	c. 436.
1907.	" " "	c. 452.
1907.	" " "	c. 563.
1908.	" " "	p. 840.
1908.	" " "	c. 268.
1908.	" " "	c. 624.
1909.	" " "	c. 266.
1909.	" " "	c. 268.
1909.	" " "	c. 490, pt. 4.
1909.	" " "	c. 527.
1910.	" " "	c. 440.
1910.	" " "	c. 481.
1911.	" " "	c. 191.
1911.	" " "	c. 359.
1911.	" " "	c. 502.
1911.	" " "	c. 551.
1902.	Revised Laws,	c. 15.
1902.	" " "	c. 6, p. 70, ss. 4 to 5.
1906.	Supplement to the Revised Laws,	c. 15, p. 94.

### History.

Neither in England or the province of Massachusetts had there been a tax on legacies and inheritances when the Massachusetts constitution was adopted in 1780. *Minot v. Winthrop*, 162 Mass. 113, 116, 38 N. E. 512, 26 L. R. A. 259.

### Early Probate Fees.

Mass. St. 1841, c. 123, approved March 18, 1841, imposed a tax of one-quarter of one per cent on all personal property of any deceased person distributable among his heirs and legatees after the payment of his debts and expenses of administering the estate, including the proceeds of real estate sold to pay legacies, with an exemption of five hundred (\$500) dollars.

Mass. St. 1841, c. 123, was repealed by Mass. St. 1843, c. 11, saving liabilities already incurred under the Mass. St. 1841.

### Mass. St. 1836-53, Supplement to Revised Statutes, c. 355.

#### AN ACT TO EXEMPT THE PERSONAL PROPERTY OF WIDOWS AND UNMARRIED FEMALES FROM TAXATION, IN CERTAIN CASES.

No tax shall hereafter be assessed upon the personal property of any widow or unmarried female, or female minor whose father is deceased, which was not received by gift, legacy, devise or inheritance; provided that the whole estate, real or personal, of such persons (person), whose personal property is so exempted from taxation, does not exceed in value the sum of five hundred dollars, exclusive of property exempted from taxation by existing laws of this state. (May 21, 1853.)

## THE COLLATERAL INHERITANCE TAX OF 1891.

### Validity.

The act of 1891 is constitutional. *Crocker v. Shaw*, 174 Mass. 266; *Minot v. Winthrop*, 162 Mass. 113, 115, 38 N. E. 512, 26 L. R. A. 259.

### Nature of Tax.

The collateral inheritance tax of 1891 is properly construed as an excise, and is not meant to be a substitute for the annual tax on estates or an additional tax of that nature. *Minot v. Winthrop*, 162 Mass. 113, 122, 38 N. E. 512, 26 L. R. A. 259.

It is not a property tax, but strictly an excise or franchise tax, although the amount of it may be made dependent to a greater or less extent upon the value of property. *Kingsbury v. Chapin*, 196 Mass. 533, 537, 82 N. E. 700.

Whether an inheritance tax is a tax on the right of testators to dispose of their property or on the right of beneficiaries to receive it will depend to some extent upon the provisions of the particular statute. *Minot v. Winthrop*, 162 Mass. 113, 38 N. E. 512

The Massachusetts inheritance tax is not upon the property itself, although its value is made the basis of taxation, but on the right of transmission. *State Street Trust Co. v. Stevens*, 209 Mass. 373, 95 N. E. 851, 44 Bank. and Tr. 149

**Mass. St. 1891, c. 425.** Approved June 11, 1891.

#### **Transfers Taxable. — Rates.**

S. 1. All property within the jurisdiction of the commonwealth, and any interest therein, whether belonging to inhabitants of the commonwealth or not, and whether tangible or intangible, which shall pass by will or by the laws of the commonwealth regulating intestate succession, or by deed, grant, sale or gift, made or intended to take effect in possession or enjoyment after the death of the grantor, to any person in trust or otherwise, other than to or for the use of the father, mother, husband, wife, lineal descendant, brother, sister, adopted child, the lineal descendant of any adopted child, the wife or widow of a son, or the husband of a daughter of a decedent, or to or for charitable, educational or religious societies or institutions, the property of which is exempt by law from taxation, shall be subject to a tax of five per centum of its value, for the use of the commonwealth; and all administrators, executors and trustees, and any such grantee, under a conveyance made during the grantor's life, shall be liable for all such taxes, with lawful interest as hereinafter provided, until the same have been paid as hereinafter directed; provided, however, that no estate shall be subject to the provisions of this act unless the value of the same, after the payment of all debts, shall exceed the sum of ten thousand dollars.

**"All Property."**

A legacy tax paid to the United States is to be deducted before paying the state succession tax, under Mass. St. 1891, c. 425, although that act contains no express exception. The court proceeds on the theory that the words of the act most naturally signify the property which the legatee actually would get were it not for the state tax imposed and that as a matter of justice he should not be taxed for more. *Hooper v. Shaw*, 176 Mass. 190, 57 N. E. 361.

**Annuity of Fluctuating Value.**

Where a testator directed his executors and trustees to pay over to his sister such sums as with the income of her own property should give her a net annual income of \$10,000 the court ruled that she was to be taxed on an annuity to the amount of the difference between \$10,000 and her net annual income at the death of the testator. The objection was made that the sum bequeathed was neither an annuity nor a life estate, as it was of an uncertain amount and liable to fluctuate from year to year. The court takes the position that it did not appear how great the fluctuations might be and it might be treated as an annuity of \$10,000 a year subject to reduction so that the value of the interest might be treated as an annuity of \$10,000 a year. *Howe v. Howe*, 179 Mass. 546, 554, 61 N. E. 225, 55 L. R. A. 626.

**Marshaling Assets.**

The court holds that the executors cannot use stock in Massachusetts corporations for the payment of debts and legacies to the exemption of the property in New Hampshire and so relieve it from liability to a tax imposed by Massachusetts law.

The court holds that the rights of all parties, including the rights of the commonwealth to its tax, vest at the death of the testator. The executors "cannot by independent action in attempting to marshal assets according to their personal wishes, enlarge or diminish the rights of legatees or of the Commonwealth. . . . The debts, the legacies in Massachusetts exempt from taxation and the expenses of administration are chargeable upon the general assets, as well those in New Hampshire as those in Massachusetts, and only a proportional part of the property in Massachusetts should be used in paying them. The balance is subject to the payment of a tax under the statute." *Per Knowlton, C. J.*, in *Kingsbury v. Chapin*, 196 Mass. 533, 82 N. E. 700.

The tax commissioner regards this case as requiring him to apportion among all the beneficiaries, including the pecuniary legatees but excepting specific legatees, the tax on each separate item of personal property in the estate. The same rule probably applies to real estate though distributed to beneficiaries specifically.

**“Within the Jurisdiction.”**

Real estate outside the state is not taxable. 1 Op. Att. Gen. 75. For the purposes of the inheritance tax the legislature regards personal property as having a situs at the domicile of the owner although this may lead to double taxation. *Frothingham v. Shaw*, 175 Mass. 59, 61, 55 N. E. 623, 78 Am. St. Rep. 475.

The fact that certificates of stock in Massachusetts corporations owned by a non-resident were actually outside the state at the time of the death of the testatrix is immaterial. *Greves v. Shaw*, 173 Mass. 205, 208, 53 N. E. 372.

There can be no doubt that stock in corporations organized under the laws of Massachusetts and of national banking corporations located in Massachusetts, is property within the jurisdiction of the state within the meaning of the act of 1891.

So stock in a Massachusetts corporation owned by a non-resident is subject to tax although the executor transferred it under the authority of his appointment in New York before he was appointed in Massachusetts. It was claimed that under these circumstances the property should be treated as if it had never been within the jurisdiction of Massachusetts and be free from taxation inasmuch as it did not come into the hands of the local administrator or executor. The court, however, concludes that the provisions of the statute are absolute and the statute assumes that the property will be administered by an executor or administrator appointed in Massachusetts. It could not be supposed that the question whether the tax should be levied or not should depend on the ability or inability of the foreign executor to obtain possession of it without a suit.

Persons claiming a succession to property in Massachusetts under non-resident owners must hold their right subject to the prior right of the commonwealth to have the property administered here in order that taxes may be paid upon the succession. *Greves v. Shaw*, 173 Mass. 205, 210, 53 N. E. 372.

The legal right of the legislature to tax the succession to “property of a non-resident owner rests upon the fact that the property is

within the State and subject to its jurisdiction. This power is as large in reference to the property of a non-resident decedent as in reference to that of the inhabitants of the commonwealth. It covers the property within the jurisdiction. A ground for its exercise is that the property has the protection of our laws and that our laws are invoked for the administration of it when a change of ownership is to be effected." *Per* Knowlton, J., in *Callahan v. Woodbridge*, 171 Mass. 595, 597, 51 N. E. 176.

*Callahan v. Woodbridge*, 171 Mass. 595, 51 N. E. 176, does not stand for the principle that the succession to the personal property in Massachusetts took place by virtue of the law of Massachusetts although the testator was domiciled in New York. That case and *Greves v. Shaw*, 53 N. E. 372, 173 Mass. 205, and *Moody v. Shaw*, 173 Mass. 375, 53 N. E. 891, rest on the right of a State to impose a tax or duty in respect to the passing on the death of a non-resident of personal property belonging to him and situated within its jurisdiction. *Frothingham v. Shaw*, 175 Mass. 59, 55 N. E. 623, 78 Am. St. Rep. 475.

### **Non-Taxable Property Not Exempt.**

"It is very plainly shown in *Plummer v. Coler*, 178 U. S. 115, 20 Sup. Co. 829, that property which is not taxable as such may constitutionally be considered under the statute in fixing the amount of an excise tax." *Per* Knowlton, C. J., in *Kingsbury v. Chapin*, 196 Mass. 533, 537, 82 N. E. 700.

### **Situs of Stocks and Bonds.**

Stocks and bonds of foreign corporations are properly taxed in Massachusetts when the testator lived there although they were and for many years had been in the hands of his agents in New York. *Frothingham v. Shaw*, 175 Mass. 59, 55 N. E. 623, 78 Am. St. Rep. 475.

### **Situs of Mortgage Interests.**

A mortgage debt for the purpose of taxation may be regarded as having a situs in the domicile of the mortgagee. *Frothingham v. Shaw*, 175 Mass. 59, 61, 78 Am. St. Rep. 475.

The court does not decide whether a note and mortgage kept in Massachusetts signed by a non-resident covering land outside the state is taxable in Massachusetts as part of the assets of the estate of a non-resident. *Callahan v. Woodbridge*, 171 Mass. 595, 599, 51 N. E. 176.

*Callahan v. Woodbridge*, 171 Mass. 595, 51 N. E. 176, is distinguished, as there the testator's domicile was in New York and it does not appear that the note and mortgage were in Massachusetts. *Frothingham v. Shaw*, 175 Mass. 59, 61, 55 N. E. 623, 78 Am. St. Rep. 475.

The testator died domiciled in New Hampshire, holding there a certain note secured by conveyance on the deposit book in The Cambridge Real Estate Associates, which was a voluntary association for investment in real estate; but the title to which remained in trustees. The court holds that the testator held an equitable interest in this real estate and that therefore, this note is subject to the succession tax. *Kinney v. Stevens*, 207 Mass. 368, 371, 93 N. E. 586.

The testator was a resident of New Hampshire and the court holds that certain promissory notes belonging to him, secured by mortgage on real estate in Massachusetts, are subject to tax in Massachusetts. The court notes that in Massachusetts the mortgagee takes not merely a lien upon the land, but he holds the legal title subject to the right of redemption and that the interest of the mortgagee is subject to taxation under the Massachusetts statute; that while for general purposes the interest of the mortgagee is treated as personal property it has a local situs and carries with it ownership of the land until it is redeemed by the payment of the debt. The court holds, therefore, that these notes and mortgages are property within the jurisdiction of Massachusetts within the meaning of the Massachusetts statute of 1909, c. 527, s. 1, although they were held by the testator at his domicile in New Hampshire at the time of his death. *Kinney v. Stevens*, 207 Mass. 368, 93 N. E. 586.

### **Corporations Incorporated in Two States.**

A railroad company with a Massachusetts charter formed by the consolidation of Massachusetts and New York corporations, and owning tracks in both states, is a Massachusetts corporation so far as the act of 1891 is concerned, and stock in the company owned by a non-resident decedent is assessable under that statute. *Moody v. Shaw*, 173 Mass. 375, 377, 53 N. E. 89.

The court holds that its value for the purpose of taxation was intended to be limited by the value of the franchise and property which it specially represents within the state of Massachusetts; and the stock in each state represents only the property within that state. *Kingsbury v. Chapin*, 196 Mass. 533, 82 N. E. 700.

[This same result is now reached by St. 1909, c. 490, pt. 4, s. 2.]

**“And Any Interest Therein.”**

A fund was given in trust to pay the income to H. till he reached forty-five and then to pay the principal to him unless he died before that time, when the principal was to go to such heirs of his body as should be living when he would have reached the age of forty-five. The court ruled that under the act of 1891, any interest to which H. will become entitled if he dies before reaching that age, or any interest of his heirs, is subject to the tax to be paid by the executor and that the determination of the value of such future interest be postponed until the happening of that future event. *Howe v. Howe*, 179 Mass. 546, 550, 61 N. E. 225, 55 L. R. A. 626.

**“Whether Belonging to Inhabitants of the Commonwealth or Not.”**

**Double taxation**, both in the state where personal property is situated and in the state of its owner's domicile, is apparently approved in *Frothingham v. Shaw*, 175 Mass. 59, 61, 55 N. E. 623, 78 Am. St. Rep. 475.

**“Tangible.”**

Real estate, cash on hand and railroad and government bonds belonging to a non-resident but within the state of Massachusetts are all taxable in Massachusetts as “tangible property.” *Callahan v. Woodbridge*, 171 Mass. 595, 598, 51 N. E. 176.

**“Which shall Pass.”**

The statute applies only to cases where the death occurs after the statute was passed. 1 Op. Att. Gen. 2

**Law Applicable to Exercise of Power of Appointment by Will.**

A., by trust deed executed prior to the passage of the act of 1891, placed property in trust for herself for life and on her death subject to appointment under her will. She died in 1895 leaving a will, and the court holds that interests under her will are taxable.

The court holds that the property passed by a deed intended to take effect in possession or enjoyment after the death of the grantor. It makes no difference that the donor of the power and the person executing it are one and the same.

The fact that the deed is dated before the passage of the act of 1891 is immaterial. It is the vesting of the property in possession and enjoyment on the death of the life tenant and after the statute



took effect that renders it liable to the tax, although there is no such express provision in the statute making it applicable whether the transfer was made before or after the passage of the act as in *In re Green*, 153 N. Y. 223; *In re Seaman*, 147 N. Y. 69, 77; *Crocker v. Shaw*, 174 Mass. 266, 54 N. E. 549.

Where a will creates a power to appoint by will, the original testator is the decedent whose estate is subject to tax under the act of 1891. Although the tax is a duty on the privilege of transmitting property by will, still the statute does not provide that all property transmitted by will shall be taxed, but only the property which passes by will intended to take effect on death. *Emmons v. Shaw*, 171 Mass. 410, 413, 50 N. E. 1033.

**Income received after the testator's death** is not covered by the statute. *Hooper v. Bradford*, 178 Mass. 95, 59 N. E. 678.

**"By Will or by the Laws of the Commonwealth."**

This language applies to foreign wills and to property of a foreign owner dying intestate. *Callahan v. Woodbridge*, 171 Mass. 595, 597, 51 N. E. 176.

**"By Deed."**

In 1893 the decedent deposited certain sums of money with a trust company under a trust agreement that the income was to be paid to a certain third party and at the expiration of five years from the date of the agreement the decedent might withdraw the whole trust fund by giving the company written notice of an intention so to do six months before that time; and the company could pay off the trust fund if it chose by giving him a like notice of its intention. If no notice were given by either party the trust fund was to remain during another term of five years and the right of withdrawing or paying off the principal sum might be exercised at intervals of five years from the date of the agreement. In case of the death of the decedent before the termination of the trust the trust fund was to be payable to a certain third party.

The decedent died before the trust fund was terminated and the court holds that a tax is due on the transfer to the third party. The court holds that this gift was intended to take effect in possession or enjoyment after the death of the grantor, as the beneficiary could have no possession or enjoyment of the principal until after his death; and the fact that she had possession and enjoyment of the income in his lifetime makes no difference. The income and principal stood each by itself and were as independent of each other

as if the income had been given to a third person. The property is subject to a tax to be assessed as of a time thirty days after the expiration of the five years referred to in the agreement and interest is to be paid upon the tax from that time. *New England Trust Co. v. Abbott*, 205 Mass. 279, 91 N. E. 379.

**"Other Than To or For the Use of the Father, etc."**

The fact that an inheritance tax is imposed on collaterals only does not make it unreasonable on the ground that it is not imposed on all heirs or beneficiaries. *Minot v. Winthrop*, 162 Mass. 113, 123, 26 L. R. A. 259.

Where the will leaves property to one for life and makes no disposition of the remainder, and one of the heirs is a brother of the testator and another is a nephew, the interest of the brother is not taxable and that of the nephew is taxable. *Dow v. Abbott*, 197 Mass. 283, 288, 84 N. E. 96.

**"Charitable, Educational, or Religious."**

A free public library may fairly be called an "educational or charitable institution" and takes exempt from the inheritance tax. *Essex v. Brooks*, 164 Mass. 79, 83, 41 N. E. 119.

"Institutions" very likely need not be incorporated. The court holds that a gift to a trust company in trust for "needy aged men and women" is not exempt, as such a trust cannot by the broadest latitude be called an "institution." Very likely the "institution" need not be incorporated, but it is contemplated as an owner of property, not as property. *Hooper v. Shaw*, 176 Mass. 190, 57 N. E. 361.

**"The Property of Which is Exempt by Law from Taxation."**

It appeared that under the Massachusetts statutes there was no general exemption from taxation of property given charitable, educational or religious societies, but certain property of religious associations, houses of worship and pews and furniture are exempt from taxation. Under them the personal and real property of a religious society is taxable even although the income is used to support religious worship.

The commonwealth contended that the exemption clause in the inheritance tax statute should be construed to provide that property passing to charitable, educational or religious societies is to be exempt to the extent to which the property of such societies or institutions is exempt by general laws.

But the court finds that the test should depend upon the question whether the institution is one whose property is generally exempt from taxation. In the case at bar the property was bequeathed for a parsonage and parsonages are not exempt from taxation. But the court holds that this is an accident, that houses of religious worship are the principal property held by religious societies and that therefore a devise to a religious society is a devise to a society whose property is generally exempt from taxation and is not subject to an inheritance tax. *First Universalist Society v. Bradford*, 185 Mass. 310, 70 N. E. 204.

The exemption extends only to institutions whose property is exempted by Massachusetts law and not by the law of another state. 1 Op. Att. Gen. 75.

### **Confined to Domestic Corporations.**

This exemption is confined to societies the property of which is exempt by the laws of Massachusetts, and does not include a New York corporation. *Minot v. Winthrop*, 162 Mass. 113, 126, 26 L. R. A. 259.

A corporation formed for the purpose of administering a deed of trust for charitable purposes is exempt as a charitable institution although the corporation might expend the money in charitable purposes in another state. *Balch v. Shaw*, 174 Mass. 144, 54 N. E. 490.

A bequest to Bowdoin College, a Maine institution, is not exempt from the inheritance tax although Bowdoin College was a corporation created by Massachusetts by the statute of 1794 before Maine was separated from Massachusetts. The court holds that nevertheless after the separation it ceased to be an institution incorporated within the state of Massachusetts within the meaning of the Massachusetts statute, and therefore it is subject to tax. The court follows *Rice v. Bradford*, 180 Mass. 540, 63 N. E. 7; *Batt v. Stevens*, 209 Mass. 319 (June 20, 1911), 95 N. E. 784.

**“And all Administrators . . . shall be Liable for all Such Taxes . . . until . . . Paid.”**

This provision plainly imports that nothing except payment shall operate as a discharge or bar the collection of the tax. *Howe v. Howe*, 179 Mass. 546, 549, 55 L. R. A. 626. See further, notes to section 18, *post*, 582.

**“Unless the Value . . . shall Exceed the Sum of Ten Thousand Dollars.”**

The court discusses the history of exemptions in the Massachusetts act in *Davis v. Stevens*, 208 Mass. 343, 94 N. E. 556. Where the estate exceeds ten thousand dollars exclusive of debts it is taxable although after the payment of the probable expenses of administration the estate will probably be less than ten thousand dollars. This is so although for the purpose of determining on what amount the tax is to be computed expenses of administration must be deducted. *Callahan v. Woodbridge*, 171 Mass. 595, 599, 51 N. E. 176.

The exemption is reckoned only on the Massachusetts property of a non-resident. *Attorney General v. Barney*, 211 Mass. 134, 97 N. E. 750.

An exemption of all estates of a value not exceeding ten thousand dollars is not unreasonable. It was objected that the excise, if upon the privilege of taking property by will or descent, should be the same whenever the privilege enjoyed is the same in kind and extent, whatever might be the value of the estate, and that the exemptions should relate to the value of the property received and not to the value of the estate. But the court remarks that the privilege taxed can be regarded either as the privilege of the owner of property to transmit it on his death, or as the privilege of these persons to receive the property. The tax too has some of the characteristics of a duty on the administration of the estates of deceased persons. The cost of administering small estates is proportionately greater than that of administering large ones. *Minot v. Winthrop*, 162 Mass. 113, 124, 38 N. E. 512, 26 L. R. A. 259.

### **Particular Estates and Remainders.**

S. 2. When any person bequeaths or devises any property to or for the use of father, mother, husband, wife, lineal descendant, brother, sister, an adopted child, the lineal descendant of any adopted child, the wife or widow of a son, or the husband of a daughter, during life or for a term of years, and the remainder to a collateral heir or to a stranger to the blood, the value of the prior estate shall, within three months after the date of giving bond by the executor, administrator or trustee, be appraised in the manner hereinafter provided, and deducted from the appraised value of such property, and the remainder shall be subject to a tax of five per centum of its value.

This section was referred to as looking to a scheme of valuation as of a date earlier than the distribution in *Hooper v. Bradford*, 178 Mass. 95, 97, 59 N. E. 678.

**Gifts to Executors or Trustees in Lieu of Commissions.**

Section 3 provides for the taxation of property in excess of reasonable compensations bequeathed to executors or trustees in lieu of their allowance.

**When Tax Accrues. — Interest. — Lien. — To Whom Tax Payable.**

S. 4. All taxes imposed by this act shall be payable to the treasurer of the commonwealth by the executors, administrators or trustees, at the expiration of two years from the date of their giving bond; provided, that whenever legacies or distributive shares are paid within the two years, the taxes thereon shall be payable at the time the same are paid. In cases, however, where the probate court has ordered the executor or administrator to retain funds to satisfy a claim of a creditor, whose right of action for which does not accrue within the two years, the payment of the tax may be suspended by an order of the court to await the disposition of such claim. If the taxes are not paid when due, interest at the rate of six per centum per annum shall be charged and collected from the time the same became due; and the taxes and interest that may accrue on the same shall be and remain a lien on the property subject to the taxes till the same are paid to the commonwealth. An executor, administrator or trustee may, if he prefers, pay the tax to the treasurer of the county in which the probate court having jurisdiction of the estate is located, and the several county treasurers shall account with the treasurer of the commonwealth.

This section was referred to in *Greves v. Shaw*, 173 Mass. 205, 209, 53 N. E. 372. It does not bar suit for recovery after the two years. *Howe v. Howe*, 179 Mass. 546, 548, 61 N. E. 225, 55 L. R. A. 626.

The state treasurer has no discretion as to the time for payment of inheritance taxes. 1 Op. Att. Gen. 268. It is not the duty of the state treasurer to determine when a tax should be paid. 1 Op. Att. Gen. 76.

**Tax on Annuity.**

The statute contemplates that the tax shall be paid out of an annuity as soon as the annuity becomes payable, and at the time when payments on account of the annuity are made, and is a method which the legislature could adopt although the tax exhausts the whole of the first payment or payments. *Minot v. Winthrop*, 162 Mass. 113, 126, 38 N. E. 512, 26 L. R. A. 259.

**Interest.**

Where the Massachusetts statute provides that the tax shall be payable at the expiration of two years after the date of giving bond with interest from that date, interest should be computed according

to that rule, although a part of the estate was given in remainder or the dispositions of the will were modified by an agreement that was entered into. The whole estate was liable to the tax and there was nothing to effect the time when it was payable. *Bradford v. Storey*, 189 Mass. 104, 75 N. E. 256.

### **Remainder.**

Where a testator gives property to one for life and leaves the remainder undistributed, and one of the heirs is a nephew, his tax is not payable until he comes into actual possession of the estate. It is to be assessed on its then value except that at his option it may be paid any time after deducting the value of the life estate, and is to be paid by him. Unless the nephew has given the bond under Mass. St. 1903, c. 276, for the payment of the tax on the personal property within one year from the death of the testatrix, then the tax is due and payable. It must be paid by the administrator upon the value at the time of the death of the testatrix of the interest coming to the nephew.

The value of the life interest is to be deducted in order to ascertain the value of the interest of the nephew. *Dow v. Abbott*, 197 Mass. 283, 288, 84 N. E. 96.

### **Deducted from Principal.**

This section contemplates that the tax shall be deducted from the principal sum and paid over to the treasurer. Where ten thousand dollars is given in trust for a life tenant, who is exempt from taxation, and the tax diminishes the principal below ten thousand dollars and reduces the income proportionately, there is no warrant for taking any part of the principal of the trust fund or of the estate generally to make up the loss of the life tenant. *Minot v. Winthrop*, 162 Mass. 113, 125, 38 N. E. 512, 26 L. R. A. 259.

### **Tax Deducted by Executor, etc.**

S. 5. Any administrator, executor, or trustee having in charge or trust any property subject to said tax, shall deduct the tax therefrom, or shall collect the tax thereon from the legatee or person entitled to said property, and he shall not deliver any specific legacy or property subject to said tax to any person until he has collected the tax thereon.

This section was referred to in *Greves v. Shaw*, 173 Mass. 205, 207, 53 N. E. 372, and in *Howe v. Howe*, 179 Mass. 546, 548, 61 N. E. 225, 55 L. R. A. 626.

the method pointed out for similar cases. *Dow v. Abbott*, 197 Mass. 283, 288, 84 N. E. 96.

### **At Death of Testator.**

The valuation under this section is to be as of the date of the death of the testator as the act implies the value when the property passes even in case of a future estate. *Howe v. Howe*, 179 Mass. 546, 551, 61 N. E. 225, 55 L. R. A. 626.

### **Life Estate.**

Where the will leaves real and personal property for life to one who is not related to the testator and makes no disposition of the remainder, the life interest under the Massachusetts collateral inheritance statute is to be assessed on its value at the death of the testatrix, and its amount ascertained, and the tax to be paid by the administrator, who has a right to collect from the life tenant so much as is due on the life interest. *Dow v. Abbott*, 197 Mass. 283, 84 N. E. 96.

### **Remainder. — Interest under Power.**

The value of a remainder interest is reckoned by deducting the value of a life estate reckoned according to the annuity tables as of the death of the testator, and not by reckoning it according to the time the life tenant actually lived, while the interest of an appointee under a life tenant is ascertained by deducting the value of the life interest reckoned according to the annuity tables as of the death of the testator. *Howe v. Howe*, 179 Mass. 546, 551, 61 N. E. 225, 55 L. R. A. 626.

### **Equity of Redemption.**

Where the testator died domiciled in New Jersey owning real estate subject to mortgage in Massachusetts, the court holds that the inheritance tax is to be computed only upon the value of the equity of redemption above the amount of the mortgage.

It was contended by the state treasurer that the doctrine of equitable conversion and exoneration should be applied to relieve the land from the encumbrance of the mortgage. But the court holds that the answer to this contention is that the rights and obligations of all parties are to be determined as of the time of the death of the decedent. And that, furthermore, the law of equitable conversion ought not to be invoked merely to subject property to

taxation, especially when the question is one of jurisdiction between different states. The court follows *In re Skinner*, 106 N. Y. App. Div. 217; *In re Sutton*, 3 N. Y. App. Div. 208; *McCurdy v. McCurdy*, 197 Mass. 248, 83 N. E. 881.

### **Jurisdiction of Probate Court.**

S. 14. The probate court having jurisdiction of the settlement of the estate of the decedent, shall have jurisdiction to hear and determine all questions in relation to said tax that may arise affecting any devise, legacy or inheritance under this act, subject to appeal as in other cases, and the treasurer of the commonwealth shall represent the interests of the commonwealth in any such proceedings.

This section was referred to in *Callahan v. Woodbridge*, 171 Mass. 595, 596, 51 N. E. 176, and in *Greves v. Shaw*, 173 Mass. 205, 209, 53 N. E. 372.

The probate court has jurisdiction over a petition praying the court to determine whether such a tax is payable and to fix its amount. *Bradford v. Storey*, 189 Mass. 104, 75 N. E. 256.

This section does not give the probate court exclusive jurisdiction but the legatee may sue the executor at law to recover his legacy. *Essex v. Brooks*, 164 Mass. 79, 41 N. E. 119. In this case the executor had the state treasurer summoned in as a party to settle the inheritance tax, and the treasurer withdrew his objection to being brought in.

The state treasurer has no power to determine nor duty to advise in advance as to whether any legacy is taxable, or any other such questions which are within the jurisdiction of the probate courts. 1 Op. Att. Gen. 85.

The question as to the liability to pay a tax is a question affecting devise, legacy or inheritance under the act, for if the tax is paid the devise, legacy or inheritance will be diminished by the payment and therefore under this section the probate court has jurisdiction of the question whether the executor of a foreign will approved in Massachusetts is liable to a tax there. *Callahan v. Woodbridge*, 171 Mass. 595, 51 N. E. 176.

### **State Treasurer to Administer Estates in Certain Cases.**

Section 15 empowers the state treasurer to take out administration where application is not made within four months from the death of the decedent.



**Accounts Must Show Payment.**

Section 16 provides that probate accounts cannot be settled unless the account shows and the court finds that the inheritance taxes have been paid.

Section 16 was referred to in *Howe v. Howe*, 179 Mass. 546, 549, 55 L. R. A. 626.

**Definitions.**

S. 17. In the foregoing sections the word "person" shall include the plural as well as the singular and artificial as well as natural persons; the word "property" shall include both real and personal estate, and any forms of interest therein whatsoever, including annuities.

**Suits for Collection of Tax. — When to be Brought.**

S. 18. The treasurer of the commonwealth shall, within six months after the same shall be due and payable, bring suit in his own name for the recovery of all taxes remaining unpaid, and shall also bring such suit when the judge of a probate court shall certify to him that a final account of any executor, administrator or trustee has been filed in said court, and that the final settlement of such estate is delayed by reason of the non-payment of such tax, and such certificate shall issue upon the application of any heir, legatee or any person in interest; provided, however, that the probate court may extend the time when any tax shall be due and payable whenever the circumstances of the case may require.

**Limitations.**

This section does not operate to set a limit of two years and six months on the right of recovery, but the provision as to action is directory merely. *Howe v. Howe*, 179 Mass. 546, 61 N. E. 225, 55 L. R. A. 626.

The Massachusetts Revised Laws, c. 202, s. 2, provide for six years' limitation on actions of contract founded upon contracts or liabilities expressed or implied. The court holds that a petition under the inheritance statute for the fixing of the inheritance tax is not included in this limitation, although the limitation applies expressly to "actions brought by the commonwealth or for its benefit." The court holds that a tax is not a debt in the ordinary sense of the word and is not founded upon a contract expressed or implied, and the collector cannot maintain an action to recover it except as authorized by statute.

The word "liability" is, it is true, of large significance, but as used in the general and special statutes of limitations refers plainly to liabilities of a contractual nature and not to proceedings to collect the inheritance tax. *Bradford v. Storey*, 189 Mass. 104, 75 N. E. 256.

**Power.**

This statute contained no provision relating to interests that vest after the death of the testator and the question arose as to the tax on an estate arising by appointment after the death of the life tenant. The court holds that although it was not ascertained till after the time appointed for payment whether the interest under the appointment was exempt or not, the tax might be collected when the appointment had been made, as under the provisions of this section the court may extend the time when any tax may be due whenever the circumstances may require. *Howe v. Howe*, 179 Mass. 546, 551, 61 N. E. 225, 55 L. R. A. 626.

**AMENDMENTS TO THE ACT OF 1891.**

Mass. St. 1892, c. 379, amends Mass. St. 1891, c. 425, s. 12, by correcting a verbal error in the original act.

Mass. St. 1893, c. 432, approved June 9, 1893, provides for extra clerical assistance in the assessment and collection of taxes.

Mass. St. 1895, c. 307, provides an exemption on all bequests unless the value of such bequest exceeds \$500, and exempts also bequests to towns for any public purpose.

This statute is not retrospective. 1 Op. Att. Gen. 288. It is only prospective in its operation and does not apply to legacies to which the parties became entitled before it took effect. *Howe v. Howe*, 179 Mass. 546, 552, 61 N. E. 225, 55 L. R. A. 626.

Mass. St. 1895, c. 430, approved May 29, 1895, strikes out the provision from section 4 of the statute of 1891 that the taxes might be paid to the county treasurers. It also amends Mass. St. 1891, c. 425, s. 9, by making it optional instead of obligatory on the state treasurer to commence proceedings against the executor for the recovery of the penalty, and by making it obligatory on the registers of probate to notify the state treasurer within thirty days for any neglect or refusal to file an inventory.

Mass. St. 1896, c. 108, extends the exemption of five hundred dollars on bequests to include also "distributive shares."

Mass. St. 1900, c. 371, s. 1, provides that the tax on national bank or state corporation stock or obligations shall be paid on assignment or transfer, and if not, the executor, administrator or trustee shall be personally liable until paid. And any bank or corporation accepting such transfer and issuing new stock shall be liable for the tax.

Section 2 forbids a safe deposit company, bank or other institution, person or persons holding securities or assets belonging to the estate of a deceased non-resident to transfer the same to a foreign executor, administrator or legal representative of such decedent until he has been licensed to receive the same, and until notice has been served on the treasurer of the intended transfer.

Section 3 provides that the treasurer and receiver general shall be made a party to all petitions by foreign executors, administrators or trustees brought under Public Statutes, c. 142, s. 3, for sale of personal estate and shall be entitled to fourteen days' notice.

Mass. St. 1901, c. 277, amends Mass. St. 1891, c. 425, s. 5, by adding to the section authority to administrators or executors to collect taxes on real estate from the heirs or devisees entitled.

Mass. St. 1901, c. 297, struck out the exemption of estates which did not exceed the sum of ten thousand (\$10,000) dollars in value.

### **Tax on Remainders.**

**Mass. St. 1902, c. 473, s. 1.** In all cases where there has been or shall be a devise, descent or bequest to collateral relatives or strangers to the blood, liable to collateral inheritance tax, to take effect in possession or come into actual enjoyment after the expiration of one or more life estates or a term of years, the tax on such property shall not be payable nor interest begin to run thereon until the person or persons entitled thereto shall come into actual possession of such property, and the tax thereon shall be assessed upon the value of the property at the time when the right of possession accrues to the person entitled thereto as aforesaid, and such person or persons shall pay the tax upon coming into possession of such property. The executor or administrator of the decedent's estate may settle his account in the probate court without being liable for said tax: provided, that such person or persons may pay the tax at any time prior to their coming into possession, and in such cases the tax shall be assessed on the value of the estate at the time of the payment of the tax, after deducting the value of the life estate or estates for years; and provided, further, that the tax on real estate shall remain a lien on the real estate on which the same is chargeable until it is paid.

Mass. St. 1902, c. 473, postponed the operation of an inheritance tax on remainders until the remainders fell in. And the act applied to "all cases where there has been or shall be a devise." The court holds that this is plainly retrospective in operation and applies to estates of decedents who died before the passage of the statute where the tax has not been paid. *Stevens v. Bradford*, 185 Mass. 439, 70 N. E. 425.

The statute of 1902, chapter 473, is applicable to estates of resident decedents in cases where the intervening life estate is taxable. 2 Op. Att. Gen. 373. This statute does not apply to the estates of non-resident decedents. 2 Op. Att. Gen. 373.

### **Lien on Real Estate.**

Mass. St. 1903, c. 248, amends Revised Laws, c. 15, s. 17, by giving the probate court jurisdiction to discharge the lien created by the act on real estate and make proper order to secure the payment of the tax to the commonwealth.

### **Compounding Tax.**

Mass. St. 1903, c. 251, authorizes the treasurer to effect such settlement as he deems for the best interest of the state of interests dependent upon the happening of a contingency or upon the exercise of a discretion.

### **Tax on Remainders.**

Mass. St. 1903, c. 276, amended Mass. St. 1902, c. 473, by requiring one entitled in remainder to give bond within one year from the death of the decedent for the payment of the tax on coming into possession; and on failure to give bond the tax was made payable as in other cases.

Where a remainder is not disposed of by will and vests as intestate estate in a brother of the testatrix it is free from tax, while the remainder which vested in a nephew is subject to tax payable when the nephew comes into actual possession of the estate. It is assessed upon its then value except that at his option it may be paid at any time after deducting the value of the life estate, and is to be paid by him. If the nephew gives a bond under the statute of 1903, chapter 276, the provisions of the statute are clear as to the tax upon the personal property. If he has not given the bond required by the statute then the tax as to the personal estate is due and payable as set forth in Revised Laws, c. 15, s. 4. The value of the life interest is to be deducted in order to ascertain the value of the interest of the remainderman. *Dow v. Abbott*, 197 Mass. 283, 288, 84 N. E. 96.

### **Compounding Tax.**

Mass. St. 1904, c. 421, provides that the state treasurer may effect a settlement of the tax in any case where there is a particular estate to open with power of appointment by deed or will.

**Fees of Appraisers.**

Mass. St. 1905, c. 367, approved May 4, 1905, amends Revised Laws, c. 15, s. 16, by providing that one-half of the fees of appraisers appointed on the application of any party interested by the probate court shall be paid by the treasurer and one-half by the other party or parties to the proceeding.

See notes to *Dow v. Abbott*, ante, p. 579, 197 Mass. 283, 84 N. E. 96.

**Exemptions.**

Mass. St. 1905, c. 470, amends the exemption to charitable, educational or religious societies by providing that all gifts "for the use of" said societies are exempt from taxation.

Mass. St. 1906, c. 436, approved May 31, 1906. This statute provides in section 1 that exemptions for charitable purposes shall extend to the trustee or trustees for public charitable purposes within the commonwealth.

S. 2. The provisions of this act shall apply to all cases in which such tax remains unpaid at the date of the passage thereof.

The court holds that a legacy to trustees for the purpose of establishing a certain Latin school in a foreign country is not exempt from taxation under the statute of 1906, chapter 436. The fact that the will authorized the trustees to form a corporation to administer the fund and that the trustees did form a Massachusetts corporation does not alter the case, as the fund vested in the trustees on the death of the testator, and there was no requirement that a corporation should be formed. The gift took effect absolutely in the trustees on the death of the testator.

The court distinguishes the case of *Balch v. Shaw*, 174 Mass. 144, 54 N. E. 490, where there was no gift to anyone until the corporation was formed. *Pierce v. Stevens*, 205 Mass. 219, 91 N. E. 319.

**Direction in Will to Pay Tax from Residue.**

Mass. St. 1907, c. 452, s. 1, provides that when a tax by the terms of the will is payable from the residue of the estate or from any source other than the legacy or devise itself, the tax shall be calculated and paid upon the appraised value of the property bequeathed or devised, without increase or addition of any kind on account of the direction that the tax shall be payable from the residue or otherwise.

This statute provided that the act should apply to all cases in which the tax remains unpaid at the date of the passage thereof.

### **The Direct Inheritance Tax and Amendments.**

Mass. St. 1907, c. 563, in effect September 1, 1907, is the first direct inheritance tax in Massachusetts and was substantially the same as the present act, printed in full, *infra*.

Mass. St. 1908, c. 268, approved May 25, 1908, authorizes the tax commissioner to excuse the register from filing inventories where no part of the estate appears to be subject to tax.

Mass. St. 1908, c. 624, approved June 12, 1908, authorizes the treasurer to abate inheritance taxes except those imposed under the statute of 1907, chapter 563, at any time after the expiration of six years from the date when such taxes become payable.

Mass. St. 1908, p. 840, is a special exemption granted to certain individuals in a certain estate.

Mass. St. 1909, c. 266, authorizes the state treasurer to bring actions of contract for the taxes. See *post*, p. 600.

Mass. St. 1909, c. 268 added to class A subject to the lower rate of taxation, the adoptive parent or the lineal ancestor of an adoptive parent.

Mass. St. 1909, c. 490, pt. 4, was approved June 12, 1909, and went into effect July 12, 1909. (Cf. R. L., c. 8, s. 1.) St. 1909, c. 527, was approved and went into effect June 19, 1909.

Mass. St. 1910, c. 440, approved April 25, 1910, authorizes the probate court to determine the taxes on real estate.

Mass. St. 1910, c. 481, approved May 4, 1910, amends St. 1909, c. 490, pt. 4, s. 23, as to the allowance of final accounts only on payment of the tax. See *post*, p. 597.

Mass. St. 1911, c. 191, approved March 25, 1911, applies to probate accounts. See *post*, p. 601.

Mass. St. 1911, c. 359, approved April 29, 1911, restricts access to papers placed on file. See *post*, p. 601.

Mass. St. 1911, c. 502, approved May 27, 1911, amends Mass. St. 1909, c. 490, pt. 4, s. 3. See *post*, p. 590.

Mass. St. 1911, c. 551, approved June 16, 1911, amends St. 1909, c. 490, pt. 4, s. 22.

### **THE PRESENT ACT.**

**Transfers Taxable. — Rates. — Exemptions.** (St. 1909, c. 527.)

S. 1. All property within the jurisdiction of the commonwealth, corporeal or incorporeal, and any interest therein, whether belonging to inhabitants of the commonwealth or not, which shall pass by will, or by the laws regulating intestate succession, or by deed, grant, or gift, except in cases of a *bona fide* purchase for full consideration in money or money's worth, made or intended to take effect

in possession or enjoyment after the death of the grantor, to any person, absolutely or in trust, except to or for the use of charitable, educational or religious societies or institutions, the property of which is by the laws of this commonwealth exempt from taxation, or for or upon trust for any charitable purposes, to be carried out within this commonwealth, or to or for the use of a city or town within this commonwealth for public purposes, or to or for the use of (class A) the husband, wife, lineal ancestor, lineal descendant, adopted child, the lineal descendant of any adopted child, the adoptive parent or lineal ancestor of an adoptive parent, the wife or widow of a son, or the husband of a daughter, of a decedent, or to or for the use of (class B) the brother, sister, nephew or niece of a decedent, shall be subject to a tax of five per cent of its value for the use of the commonwealth; and such property which shall so pass to or for the use of a member of class A shall be subject to a tax of one per cent of its value for the use of the commonwealth if such value does not exceed fifty thousand dollars, to a tax of one and one-half per cent if its value exceeds fifty thousand and does not exceed one hundred thousand dollars, and to a tax of two per cent if its value exceeds one hundred thousand dollars; and such property which shall so pass to or for the use of a member of class B shall be subject to a tax of three per cent of its value for the use of the commonwealth if such value does not exceed twenty-five thousand dollars, to a tax of four per cent if its value exceeds twenty-five thousand and does not exceed one hundred thousand dollars, and to a tax of five per cent if its value exceeds one hundred thousand dollars; and administrators, executors and trustees, and any grantees under such conveyance made during the grantor's life, shall be liable for such taxes, with interest, until the same have been paid; but no bequest, devise or distributive share of an estate which shall so pass to or for the use of a husband, wife, father, mother, child, adopted child, adoptive father or adoptive mother of the deceased, unless its value exceeds ten thousand dollars, and no other bequest, devise or distributive share of an estate unless its value exceeds one thousand dollars, shall be subject to the provisions of this act; but no tax shall be exacted upon property so passing which shall reduce its value below the amount of the above exemptions.

[See notes to the Act of 1891, *ante*. As to valuation of remainder see notes to *Dow v. Abbott*, *ante*, p. 585.]

The Mass. St. 1909, c. 527, s. 1, is merely a declaratory act. "The curious part of St. 1909, c. 527, which we now hold to be a declaratory act, is that although it is an act subsequent to the codifying act (St. 1909, c. 490), it amends not the codifying act but one of the earlier acts re-enacted in the codifying act. The explanation is that the latter act went into effect on its passage, June 19, 1909, while the codifying act (which was passed on June 12) did not. [Cf. R. L., c. 8, s. 1.] The matter is further expressly dealt with in St. 1909, c. 490, pt. 4, s. 27." *Per* Loring, J., in *Davis v. Stevens*, 208 Mass. 343, 94 N. E. 556.

#### "Within the Jurisdiction."

The court notes the contention of the state treasurer that because debts owned by a non-resident against a resident of Massachusetts

can only be enforced by the aid of Massachusetts' courts it ought to hold they are property within the jurisdiction of the state; but the court does not decide this contention. . *Kinney v. Stevens*, 207 Mass. 368, 93 N. E. 586.

The words "**which shall pass by will**" in the Mass. St. 1909, c. 490, pt. 4, s. 1, described only property which passed by the terms of the will as written and not as changed by any agreement for compromise made within or without the statute. Any other interpretation would make the amount to be assessed hinge on the manner in which the agreement was to be carried out. The court comes to this conclusion after examining the history of the Massachusetts statute allowing the parties with the approval of the court to alter by compromise the terms of a will. *Baxter v. Stevens*, 209 Mass. 459, 95 N. E. 854.

### **"For Full Consideration in Money or Money's Worth."**

Under the Mass. St. 1909, c. 490, pt. 4, s. 1 (repeated in 1909, c. 527, s. 1), a transfer for a consideration is not exempt from tax unless "the consideration, whatever form it may assume, is not only valuable, but full, by covering the value in money, or the equivalent in money of the property transferred. . . . If services rendered, or to be rendered, constitute the consideration . . . their value may be inquired into and ascertained, and where in "money's worth" they equal or exceed the fair value of the property at the death of the transferor no tax can be imposed. If they fall below such value, there is no provision for a reduction, leaving the excess only to be taxed as a gratuity." *Per Braley, J.*, in *State Street Trust Co. v. Stevens*. 95 N. E. 851 (June 22, 1911.)

The testator made an agreement to leave property by will in consideration of care and support to be given him for the rest of his life and he made a will carrying out the agreement. The court finds that this is not a "*bona fide* purchase for full consideration for money or money's worth made . . . to take effect . . . after the death of the grantor." The court finds that the devisee took no title in her lifetime, but that the words quoted applied only to a deed, not to a will. As the will was made and allowed the devisee is bound by an effective performance of the agreement and must take compensation under the will, and as an incident of the transfer of the estate to her she must suffer the assessment of the tax. The court suggests that for actual disbursements incurred in the service



the devisee may well be a creditor of the estate. *In re Perry*. (Middlesex County Probate Court, July, 1911, unreported.)

### **Religious Societies.**

It has been decided at *nisi prius* and affirmed in the supreme court that the Young Men's Christian Association is a religious corporation. *Little v. Newburyport*, 210 Mass. 414, 96 N. E. 1032.

### **"To or For the Use of a City or Town."**

The testator made a bequest to a town in New Hampshire of the residue of her property as a perpetual fund in trust, the income to be expended in aid of the worthy poor of American parentage, residents of the town. The testator died November 23, 1908, and the court holds that the Mass. St. 1909, c. 527, s. 1, providing that the exemption of gifts to charitable purposes shall be an exemption of gifts to "charities to be carried out within this commonwealth"; and that the exemption of bequests to a "state or town for public purposes" shall be an exemption to "a city or town within this commonwealth for public purposes" is merely declaratory of previous statutes. The court notes that the charitable exemption has always been confined in Massachusetts to towns of Massachusetts and finds in the history of the statutes which it discusses no reason to think that this policy had ever been altered. *Davis v. Stevens*, 208 Mass. 343, 94 N. E. 556.

### **Corporations Incorporated in Two States.**

St. 1909, c. 490, pt. 4.

S. 2. When the personal estate so passing from any person not an inhabitant of this commonwealth shall consist in whole or in part of shares in any railroad or street railway company or telegraph or telephone company incorporated under the laws of this commonwealth and also of some other state or country, so much only of each share as is proportional to the part of such company's line lying within this commonwealth shall be considered as property of such person within the jurisdiction of the commonwealth for the purposes of this part.

[See notes to the Act of 1891, *ante*, p. 570.]

Mass. St. 1911, c. 502, s. 1, approved May 27, 1911, amends St. 1909, c. 490, pt. 4, s. 3, to read as follows:—

### **Stock in Companies in Two or More States.**

Property of a resident of the commonwealth which is not therein at the time of his death, including so much of each share of stock in any railroad or street railway company or telegraph or telephone company incorporated under the laws of this commonwealth and also under the laws of some other state or country as is proportional to the part of such company's line lying without the common-

wealth, shall not be taxable under the provisions of this part if legally subject in another state or country to a tax of like character and amount to that hereby imposed, and if such tax be actually paid or guaranteed or secured in accordance with law in such other state or country; if legally subject in another state or country to a tax of like character but of less amount than that hereby imposed and such tax be actually paid or guaranteed or secured as aforesaid, such property shall be taxable under this part to the extent of the difference between the tax thus actually paid, guaranteed or secured and the amount for which such property would otherwise be liable hereunder. Property of a non-resident decedent which is within the jurisdiction of the commonwealth at the time of his death, if subject to a tax of like character with that imposed by this part by the law of the state or country of his residence, shall be subject only to such portion of the tax hereby imposed as may be in excess of such tax imposed by the laws of such state or country: *provided*, that a like exemption is made by the laws of such other state or country in favor of estates of citizens of this commonwealth, but no such exemption shall be allowed until such tax provided for by the law of such other state or country shall be actually paid, guaranteed or secured in accordance with law.

S. 2. The provisions of this act shall apply to all cases in which the tax remains unpaid at the date of the passage hereof.

S. 3. This act shall take effect upon its passage.

[See notes to the Act of 1891, *ante*, p. 568 *et seq.* As to the effect of this provision see general notes, *ante*, p. 563.]

The following states have reciprocal provisions for inheritance taxes paid in another state: W. Va. St. 1904, c. 6, s. 6;| Mass. St. 1907, c. 563, s. 3; Vt. St. 1904, no. 30, s. 3. Connecticut tried a reciprocal provision (statute of 1903, chapter 63) but has now adopted a retaliatory arrangement (statute of 1907, chapter 179).

**When Payable. — Interest. — Lien.** (St. 1909, c. 527, s. 2.)

Except as hereinafter provided, taxes imposed by the provisions of this act shall be payable to the treasurer and receiver general by the executors, administrators or trustees at the expiration of two years after the date of their giving bond. If the probate court, acting under the provisions of section thirteen of chapter one hundred and forty-one of the Revised Laws, has ordered the executor or administrator to retain funds to satisfy a claim of a creditor, the payment of the tax may be suspended by the court to await the disposition of such claim. In all cases where there shall be a grant, devise, descent or bequest to take effect in possession or come into actual enjoyment after the expiration of one or more life estates or a term of years, the taxes thereon shall be payable by the executors, administrators or trustees in office when such right of possession accrues, or, if there is no such executor, administrator or trustee, by the person or persons so entitled thereto, at the expiration of one year after the date when the right of possession accrues to the person or persons so entitled. If the taxes are not paid when due, interest shall be charged and collected from the time the same became payable. Property of which a decedent dies seized or possessed, subject to taxes as aforesaid, in whatever form of investment it may happen to be, and all property acquired in substitution therefor, shall be charged with a lien for all taxes and

interest thereon which are or may become due on such property; but said lien shall not affect any personal property after the same has been sold or disposed of for value by the executors, administrators or trustees. The lien charged by this act upon any real estate or separate parcel thereof may be discharged by the payment of all taxes due and to become due upon said real estate or separate parcel, or by an order or decree of the probate court discharging said lien and securing the payment to the commonwealth of the tax due or to become due by bond or deposit as hereinafter provided, or by transferring such lien to other real estate owned by the owner or owners of said real estate or separate parcel thereof.

[Applicable to all cases where tax unpaid, see St. 1909, c. 527, s. 10, *post*, p. 600. See notes to the Act of 1891, *ante*, p. 576.]

The effect of this section is that there is no inducement to pay the tax within the two-year period. The tax commissioner's office declines to give any credit for prompt payment within that time even under the section authorizing the compromise of claims.

**Deposit in Lien of Tax.** (St. 1909, c. 490, pt. 4.)

S. 5. In every case where there shall be a bequest or grant of personal estate made or intended to take effect in possession or enjoyment after the death of the grantor, to take effect in possession or come into actual enjoyment after the expiration of one or more life estates or a term of years, whether conditioned upon the happening of a contingency or dependent upon the exercise of a discretion, or subject to a power of appointment or otherwise, the executor or administrator or grantee may deposit with the treasurer and receiver general a sum of money sufficient in the opinion of the tax commissioner to pay all taxes which may become due upon such bequest or grant, and the person or persons having the right to the use or income of such personal estate shall be entitled to receive from the commonwealth interest at the rate of two and one-half per cent per annum upon such deposit, and when said tax shall become due the treasurer and receiver general shall repay to the persons entitled thereto the difference between the tax certified and the amount deposited; or any executor, administrator, trustee or grantee, or any person interested in such bequest or grant may give bond to a judge of the probate court having jurisdiction of the estate of the decedent, in such amount and with such sureties as said court may approve, with the condition that the obligor shall notify the tax commissioner when said tax becomes due and shall then pay the same to the treasurer and receiver general.

**Method of Valuation.** (St. 1909, c. 527, s. 3.)

Except as hereinafter provided, said tax shall be assessed upon the actual value of the property at the time of the death of the decedent. In every case where there shall be a devise, descent, bequest or grant to take effect in possession or enjoyment after the expiration of one or more life estates or a term of years, the tax shall be assessed on the actual value of the property or the interest of the beneficiary therein at the time when he becomes entitled to the same in possession or enjoyment. The value of an annuity or a life interest in any such property, or any interest therein less than an absolute interest, shall be determined by the American experience tables at four per cent compound interest.

[See notes to the Act of 1891, *ante*, p. 579.]

**Tax on Future Interests.** (St. 1909, c. 527, s. 4.)

Any person or persons entitled to a future interest or to future interests in any property may pay the tax on account of the same at any time before such tax would be due in accordance with the provisions hereinbefore contained, and in such cases the tax shall be assessed upon the actual value of the interest at the time of the payment of the tax, and such value shall be determined by the tax commissioner as hereinafter provided. In every case in which it is impossible to compute the present value of any interest the tax commissioner may, with the approval of the attorney general, effect such settlement of the tax as he shall deem to be for the best interests of the commonwealth, and payment of the sum so agreed upon shall be a full satisfaction of such tax.

[Applicable to all cases where tax unpaid, see St. 1909, c. 517, s. 10. See notes to the Act of 1891, *ante*, p. 580.]

**Property Bequeathed to an Executor, etc., in Lieu of Compensation.**  
(St. 1909, c. 490, pt. 4.)

S. 8. If a testator gives, bequeaths or devises to his executors or trustees any property otherwise liable to said tax, in lieu of their compensation, the value thereof in excess of reasonable compensation, as determined by the probate court upon the application of any interested party or of the tax commissioner, shall nevertheless be subject to the provisions of this part.

**Executor, etc., Holding Property Subject to Tax shall Deduct the Tax or Collect it from the Legatee, etc.** (St. 1909, c. 490, pt. 4.)

S. 9. An executor, administrator or trustee holding property subject to said tax shall deduct the tax therefrom or collect it from the legatee or person entitled to said property; and he shall not deliver property or a specific legacy subject to said tax until he has collected the tax thereon. An executor or administrator shall collect taxes due upon land which is subject to tax under the provisions hereof from the heirs or devisees entitled thereto, and he may be authorized to sell said land, according to the provisions of section twelve, if they refuse or neglect to pay said tax.

**If a Legacy is Payable out of Real Estate the Devisee shall Pay the Tax to the Executor, etc.** (St. 1909, c. 490, pt. 4.)

S. 10. If a legacy subject to said tax is charged upon or payable out of real estate, the heir or devisee, before paying it, shall deduct said tax therefrom and pay it to the executor, administrator or trustee, and the tax shall remain a lien upon said real estate until it is paid. Payment thereof may be enforced by the executor, administrator or trustee in the same manner as the payment of the legacy itself could be enforced.

**No Tax Chargeable Upon Money Applied in Payment of Succession Tax in Certain Cases.** (St. 1909, c. 490, pt. 4.)

S. 11. When provision is made by any will or other instrument for payment of the legacy or a succession tax upon any gift thereby made out of any property other than that so given, no tax shall be chargeable upon any money to be applied in payment of such tax.

**Probate Court May Authorize Sale of Real Estate in Certain Cases.**  
(St. 1909, c. 490, pt. 4.)

S. 12. The probate court may authorize executors, administrators and trustees to sell the real estate of a decedent for the payment of said tax in the same manner as it may authorize them to sell real estate for the payment of debts.

**Inventory.** (St. 1909, c. 527, s. 5.)

A full and complete inventory and appraisal under oath of every estate shall be filed in the probate court or with the tax commissioner by the executor, administrator or trustee within three months after his appointment, and such inventory shall contain a complete list of all the assets within the knowledge of the said executor, administrator or trustee. If he neglects or refuses to file such an inventory and appraisal he shall be liable to a penalty of not more than one thousand dollars, which shall be recovered by the tax commissioner for the use of the commonwealth, and the register of probate shall notify the tax commissioner within thirty days after the expiration of said three months of the failure of any executor, administrator or trustee to file an inventory and appraisal in his office.

[To what cases applicable, see St. 1909, c. 527, s. 11. See notes to the Act of 1891, s. 9, *ante*, p. 578.]

**Register to Furnish Inventory, etc., to Tax Commissioner.** (St. 1909, c. 527, s. 6.)

Within thirty days after the filing of the inventory and appraisal provided for in the preceding section, the register of probate shall send by mail to the tax commissioner a copy thereof. The register shall also, within the same period, send by mail to the tax commissioner a copy of the will of the decedent, if such has been allowed by the probate court. The register shall also furnish such copies of papers in his office as the tax commissioner shall require, and shall furnish information as to the records and files in his office in such form as the tax commissioner may require. A refusal or neglect by the register so to send a copy of such inventory and appraisal, or to furnish such copies or information shall be a breach of his official bond; but the tax commissioner may excuse the register from filing inventories or copies of inventories and of wills of estates no part of which, in his judgment, appears to be subject to a tax under the provisions of this chapter.

[See notes to the Act of 1891, s. 10, *ante*, p. 579.]

**In Cases of Assignment or Transfer of Stock the Tax shall be Paid to the Treasurer and Receiver General, etc.** (St. 1909, c. 490, pt. 4.)

S. 15. If a foreign executor, administrator or trustee assigns or transfers any stock in any national bank located in this commonwealth or in any corporation organized under the laws of this commonwealth, owned by a deceased non-resident at the date of his death and liable to a tax under the provisions of this part, the tax shall be paid to the treasurer and receiver general at the time of such assignment or transfer; and if it is not paid when due, such executor, administrator or trustee shall be personally liable therefor until it is paid. A bank located in this commonwealth or a corporation organized under the laws of this commonwealth which shall record a transfer of any share of its stock made by a foreign

executor, administrator or trustee, or issue a new certificate for a share of its stock at the instance of a foreign executor, administrator or trustee, before all taxes imposed thereon by the provisions of this act have been paid, shall be liable for such tax in an action of contract brought by the treasurer and receiver general.

**License for Transfer of Property of Non-Resident.** (St. 1909, c. 527, s. 7.)

Securities or assets belonging to the estate of a deceased non-resident shall not be delivered or transferred to a foreign executor, administrator or legal representative of such decedent, unless such executor, administrator or legal representative has been licensed to receive the said securities or assets under the provisions of section three of chapter one hundred and forty-eight of the Revised Laws. License to receive, sell, transfer or convey securities or assets under the provisions of section three of said chapter one hundred and forty-eight of the Revised Laws shall not be granted unless it appears to the judge of the probate court that all taxes imposed by the provisions of this act have been paid or secured according to law.<sup>1</sup> Any person or corporation that delivers or transfers any securities or assets belonging to the estate of a non-resident decedent before all taxes imposed thereon by the provisions of this act have been paid or secured according to law, shall be liable for such tax in an action of contract brought by the treasurer and receiver general.<sup>1</sup> The notice required by section three of said chapter one hundred and forty-eight to be given to the treasurer and receiver general shall be given to the tax commissioner in regard to all property subject to the provisions of this act, instead of being given to the treasurer and receiver general.

**The Tax Commissioner to be a Party to Petitions by Foreign Executors, etc.** (St. 1909, c. 490, pt. 4.)

S. 17. The tax commissioner shall be made a party to all petitions by foreign executors, administrators or trustees brought under the provisions of section three of chapter one hundred and forty-eight of the Revised Laws, and no decree shall be made upon any such petition unless it appears that notice of such petition has been served on the tax commissioner fourteen days at least before the return of such petition.

[See notes to the act of 1891, s. 14, *ante*, p. 581.]

**Refund.** (St. 1909, c. 490, pt. 4.)

S. 18. If a person who has paid such tax afterward refunds a portion of the property on which it was paid, or if it is judicially determined that the whole or any part of such tax ought not to have been paid, such tax, or the due proportion thereof, shall be repaid to him by the executor, administrator or trustee.

[See notes to the Act of 1891, s. 12, *ante*, p. 579.]

**Value of Property Liable to Tax to be Determined by the Tax Commissioner, etc.** (St. 1909, c. 490, pt. 4.)

S. 19. The value of the property upon which the tax is computed shall be determined by the tax commissioner and notified by him to the person or persons by whom the tax is payable, and such determination shall be final unless the value so determined shall be reduced by proceedings as herein provided. At any time

within three months after such determination the probate court shall, upon the application of any party interested in the succession, or of the executor, administrator or trustee, appoint one disinterested appraiser or three disinterested appraisers, who, first being sworn, shall appraise such property at its actual market value, as of the day of the death of the decedent and shall make return thereof to said court. Such return, when accepted by said court, shall be final: *provided*, that any party aggrieved by such appraisal shall have an appeal upon matters of law. One-half of the fees of said appraisers, as determined by the judge of said court, shall be paid by the treasurer and receiver general, and one-half of said fees shall be paid by the other party or parties to said proceeding.

[See notes to the Act of 1891, s. 13, *ante*, p. 579.]

**Tax Commissioner shall Certify Amount of Tax Due to the Treasurer and Receiver General, etc. (St. 1909, c. 490, pt. 4.)**

S. 20. The tax commissioner shall determine the amount of tax due and payable upon any estate or upon any part thereof, and shall certify the amount so due and payable to the treasurer and receiver general and to the person or persons by whom the tax is payable; but in the determination of the amount of any tax said tax commissioner shall not be required to consider any payments on account of debts or expenses of administration which have not been allowed by the probate court having jurisdiction of said estate. Payment of the amount so certified shall be a discharge of the tax. An executor, administrator, trustee or grantee who is aggrieved by any determination of the tax commissioner may, within one year after the payment of any tax to the treasurer and receiver general, apply by a petition in equity to the probate court having jurisdiction of the estate of the decedent for the abatement of said tax or any part thereof, and if the court adjudges that said tax or any part thereof was wrongly exacted it shall order an abatement of such portion of said tax as was assessed without authority of law. Upon a final decision ordering an abatement of any portion of said tax, the treasurer and receiver general shall pay the amount adjudged to have been illegally exacted, with interest, without any further act or resolve making appropriation therefor.

[See notes to the Act of 1891, *ante*, p. 579.]

**The Probate Court to Hear and Determine all Questions, etc. (St. 1909 c. 490, pt. 4.)**

S. 21. The probate court having jurisdiction of the settlement of the estate of the decedent shall, subject to appeal as in other cases, hear and determine all questions relative to said tax, and the treasurer and receiver general shall represent the commonwealth in any such proceedings. If the court shall find that any tax remains due, it shall order the executor, administrator or trustee to pay the same, with interest and costs; and execution shall be awarded against the goods and estate of the deceased in the hands of the executor, administrator or trustee, or, if it appears that there are no such goods or estate in his hands, against the goods and estate of the executor, administrator or trustee, as if for his own debt; but the administrators, executors, trustees and grantees hereinbefore mentioned shall be personally liable only for such taxes as shall be payable while they continue in the said offices or have title as such grantees respectively.

[See notes to the Act of 1891, s. 14, *ante*, p. 581.]

**If a Will is Not Offered for Probate within Four Months the Probate Court to Appoint an Administrator, etc.** (St. 1909, c. 490, pt. 4.)

S. 22. If, upon the decease of a person leaving an estate liable to a tax under the provisions of this part, a will disposing of such estate is not offered for probate, or an application for administration made within four months after such decease, the probate court, upon application by the tax commissioner, shall appoint an administrator. (As amended by St. 1911, c. 551.)

**No Final Account Allowed Till Taxes Paid.** (St. 1910, c. 481, s. 1, amending St. 1909, c. 490, pt. 4. s. 23.)

The final or other account heretofore or hereafter filed of an executor, administrator or trustee heretofore or hereafter appointed, may be allowed by the probate court, if such account shows, and the judge of said court finds, that all taxes imposed by the provisions of part four of chapter four hundred and ninety of the acts of the year nineteen hundred and nine, and of acts in amendment thereof or in addition thereto, upon any property or interest therein belonging to the estate to be settled by said account and already payable have been paid, and that such property, or interest therein, has been transferred to a trustee appointed by a probate court of this commonwealth who has given bond, with sufficient sureties, in such a sum as to insure the payment of all taxes which may become due on said estate, unless such trustee is exempted from giving sureties by the probate court appointing him.

[See notes to the Act of 1891, s. 16, *ante*, p. 582.]

**Proceedings for Recovery.** (St. 1909, c. 490, pt. 4.)

S. 24. The treasurer and receiver general shall commence proceedings for the recovery of any of said taxes within six months after the same become payable, and also whenever the judge of a probate court certifies to him that the final account of an executor, administrator or trustee has been filed in such court, and that the settlement of the estate is delayed because of the non-payment of said tax. The probate court shall so certify upon the application of any heir; legatee or other person interested therein, and may extend the time of payment of said tax whenever the circumstances of the case require.

**Decree of Distribution no Defence to Action.**

The intestate died in 1892 and the defendant was appointed administrator in that year and her final account was allowed in March, 1895. It was admitted that an inheritance tax should have been paid on the estate and never was paid; but the administrator claims that she is protected from liability by the decrees of distribution of the probate court under which she acted.

The court assumes that the decrees were properly entered and that the probate court had jurisdiction and that the administrator acted in good faith, but the court holds that the probate decrees are no protection to the administrator, relying on *Attorney General*



v. *Stone*, 209 Mass. 186, 95 N. E. 395; *Attorney General v. Rafferty*, 209 Mass. 321, 95 N. E. 747.

**Not to Apply in Certain Cases.** (St. 1909, c. 490, pt. 4.)

S. 25. This part shall not apply to estates of persons deceased prior to the date when chapter five hundred and sixty-three of the acts of the year nineteen hundred and seven took effect, nor to property passing by deed, grant, sale or gift made prior to said date; but said estates and property shall remain subject to the provisions of law in force prior to the passage of said chapter.

**How Construed.** (St. 1909, c. 490, pt. 4.)

S. 26. The provisions of this act, so far as they are the same as those of existing statutes, shall be construed as continuations thereof, and not as new enactments, and a reference in a statute which has not been repealed to provisions of law which have been revised and re-enacted herein shall be construed as applying to such provisions as so incorporated in this act; they shall not affect any act done, liability incurred, or any right accrued and established, or any suit or prosecution, civil or criminal, pending or to be instituted, to enforce any right or penalty or punish any offence under the authority of existing laws, but the proceedings in such cases shall conform to the provisions of this act.

**Not Affecting Other Legislation of 1909.** (St. 1909, c. 490, pt. 4.)

S. 27. Nothing in this act contained shall be construed as repealing or in any way affecting any other legislation passed in the year nineteen hundred and nine.

[Approved June 12, 1909. In effect July 12, 1909, under the terms of R. L., c. 8, s. 1.]

**Powers.** (St. 1909, c. 527.)

S. 8. Whenever any person shall exercise a power of appointment derived from any disposition of property made prior to September first, nineteen hundred and seven, such appointment when made shall be deemed to be a disposition of property by the person exercising such power, taxable under the provisions of chapter five hundred and sixty-three of the acts of the year nineteen hundred and seven, and of all acts in amendment thereof and in addition thereto, in the same manner as though the property to which such appointment relates belonged absolutely to the donee of such power, and had been bequeathed or devised by the donee by will; and whenever any person possessing such a power of appointment so derived shall omit or fail to exercise the same within the time provided therefor, in whole or in part, a disposition of property taxable under the provisions of chapter five hundred and sixty-three of the acts of the year nineteen hundred and seven and all acts in amendment thereof and in addition thereto shall be deemed to take place to the extent of such omission or failure in the same manner as though the persons or corporations thereby becoming entitled to the possession or enjoyment of the property to which such power related had succeeded thereto by a will of the donee of the power failing to exercise such power, taking effect at the time of such omission or failure. The provisions of chapter fifteen of the Revised Laws, chapter four hundred and seventy-three of the acts of the year nineteen hundred and two, chapters two hundred and forty-eight,

two hundred and fifty-one and two hundred and seventy-six of the acts of the year nineteen hundred and three, chapter four hundred and twenty-one of the acts of the year nineteen hundred and four, chapters three hundred and sixty-seven and four hundred and seventy of the acts of the year nineteen hundred and five and chapter four hundred and thirty-six of the acts of the year nineteen hundred and six are hereby repealed in so far as they apply to the taxation of property passing through or by reason of powers of appointment created in dispositions of property made subsequent to June eleventh, eighteen hundred and ninety-one, and prior to September first, nineteen hundred and seven, which have not been fully exercised prior to the passage of this act or the taxes thereon settled under the provisions of chapter four hundred and twenty-one of the acts of the year nineteen hundred and four. The provisions of section twenty-five of chapter five hundred and sixty-three of the acts of the year nineteen hundred and seven are hereby repealed in so far as the same are inconsistent with the provisions of this act.

[See notes to the Act of 1891, *ante*, p. 571.]

The Mass. St. 1909, c. 527, s. 8, is different from the former statutes in that it provides that the taxation of property subject to a power of appointment shall be in the same manner as though the property belonged absolutely to the donee of the power and had been bequeathed or devised by the donee by will. In this respect the provision is different from the construction that is given to the previous statute in *Emmons v. Shaw*, 171 Mass. 410, 50 N. E. 1033; *Minot v. Stevens*, 207 Mass. 588, 38 N. E. 512.

The donor by marriage settlement executed in 1844 conveyed property to trustees to pay the income to a certain person for life, and on her death to convey it as she might by will appoint and in default of appointment to her heirs at law. The life tenant died August 17, 1909, without exercising the power and the court holds that a succession tax is due under the statute of 1909, chapter 527, section 8.

The court remarks that it is held without dissent that the legislature has power to lay a tax on the exercise of the power of appointment although the power was created before the passage of the statute.

The court goes further and says that property held subject to a power may be said by the legislature to be not vested in anybody and that when it vests in possession through a proper disposition of it which is dependent upon the will and conduct of the donee a succession tax shall be imposed, whether the succession is determined by action or refraining from action on the part of the donee. *Minot v. Stevens*, 207 Mass. 588, 38 N. E. 512.

**Highest Rate to Apply Where Information is Not Furnished.** (St. 1909, c. 527.)

S. 9. Whenever an executor, administrator, trustee or any person who is liable to taxation under the provisions of chapter five hundred and sixty-three of the acts of the year nineteen hundred and seven and all acts in amendment thereof and in addition thereto, refuses or neglects to furnish the tax commissioner with any information which in the opinion of the tax commissioner is necessary to the proper computation of the taxes payable by such executor, administrator, trustee or person, after having been requested so to do, the tax commissioner shall certify such taxes at the highest rate at which they could in any event be computed.

**Sections 2 and 4 to Apply Where Tax is Unpaid.** (St. 1909, c. 527.)

S. 10. The provisions of sections two and four of this act shall apply to all cases in which the tax remains unpaid at the date of the passage hereof.

**Section 5 Not to Apply to Executors, etc., Appointed Prior to Passage.** (St. 1909, c. 527.)

S. 11. The provisions of section five of this act shall not apply to executors, administrators or trustees appointed prior to the passage hereof, but such executors, administrators or trustees shall remain subject to the provisions of said section thirteen prior to its amendment.

**Actions to Recover.** (St. 1909, c. 266.)

S. 1. Taxes imposed by chapter four hundred and twenty-five of the acts of the year eighteen hundred and ninety-one, and the acts in amendment thereof and in addition thereto, and by chapter fifteen of the Revised Laws, and the acts in amendment thereof and in addition thereto, and by chapter five hundred and sixty-three of the acts of the year nineteen hundred and seven, and the acts in amendment thereof and in addition thereto, may be recovered by the treasurer and receiver general in an action of contract brought in the name of the commonwealth, or by an information in equity brought in the supreme judicial court by the attorney general at the relation of the treasurer and receiver general. In a proceeding under this act for the collection of taxes imposed by chapter four hundred and twenty-five of the acts of the year eighteen hundred and ninety-one, and the acts in amendment thereof and in addition thereto, or by chapter fifteen of the Revised Laws, and the acts in amendment thereof and in addition thereto, a final decree of the probate court in a proceeding to which the treasurer and receiver general was a party, fixing the amount of the tax, shall be conclusive as to such amount; but if there has been no such determination the amount may be determined in proceedings under this act. In a proceeding under this act for the collection of taxes imposed by chapter five hundred and sixty-three of the acts of the year nineteen hundred and seven, and the acts in amendment thereof and in addition thereto, the determination by the tax commissioner in accordance with the provisions of section twenty of said chapter, of the amount of the tax shall be final as to such amount: *provided, however,* that an executor, administrator, trustee or grantee may show, in any proceeding brought against him under this act, any facts which would entitle him to an abatement under the provisions of section twenty of said chapter, and a judgment or decree shall be entered for the amount of the tax so determined less the amount proved to have been assessed

without authority of law, together with interest and costs. If upon an information brought under this act the court shall find that any tax remains due, it shall order the executor, administrator, trustee or grantee to pay the same, with interest and costs, and execution may be awarded therefor. Execution awarded upon judgments and decrees for taxes imposed by chapter five hundred and sixty-three of the acts of the year nineteen hundred and seven, and the acts in amendment thereof and in addition thereto, shall be awarded in accordance with the provisions of section twenty-one of said chapter.

[See notes to section 24, *ante* p. 597.]

#### **Penalties and Forfeitures, etc.**

S. 2. Penalties and forfeitures incurred by persons under the provisions of chapter five hundred and sixty-three of the acts of the year nineteen hundred and seven, and the acts in amendment thereof and in addition thereto, may be recovered by the treasurer and receiver general in an action of contract brought in the name of the commonwealth, or by the information in equity brought in the supreme judicial court by the attorney general at the relation of the treasurer and receiver general.

S. 3. This act shall take effect upon its passage. [Approved April 8, 1909.]

#### **Assessment of Tax on Real Estate.**

Mass. St. 1910, c. 440, approved April 25, 1910, authorizes the probate court to determine the amount of taxes imposed on real estate; that after such determination the state treasurer may collect the taxes and interest by a sale.

#### **Final Account of Fiduciary. (Mass. St. 1911, c. 191.)**

S. 1. In all cases in which a tax is due under the provisions of chapter four hundred and ninety, part IV, of the acts of the year nineteen hundred and nine, and the amount thereof cannot be ascertained, the final account of the executor, administrator or trustee liable therefor may be allowed if it appears that all taxes imposed by the provisions of said chapter upon any property or interest therein belonging to the estate to be settled by said account and already payable, the amount of which can be ascertained, have been paid, and that such property or interest therein, has been transferred to a trustee appointed by a probate court of this commonwealth who has given bond, with sufficient sureties, in such a sum as to insure the payment of all taxes which are or may become due on said estate, unless such trustee is exempted from giving sureties by the probate court appointing him; and such trustee shall be liable for such taxes and the interest thereon in the same manner and to the same amount as if he had been the executor, administrator or trustee originally liable therefor, and the property received by him shall be subject to a lien for said taxes and interest until the same are paid.

S. 2. This act shall take effect upon its passage. [Approved March 25, 1911.]

#### **Access Restricted to Papers Filed. (Mass. St. 1911, c. 359.)**

S. 1. Papers, copies of papers, affidavits, statements, letters and other information and evidence filed with the tax commissioner in connection with the

assessment of taxes upon legacies and successions, except inventories filed with the tax commissioner under the provisions of section thirteen of part four of chapter four hundred and ninety of the acts of the year nineteen hundred and nine, as amended by section five of chapter five hundred and twenty-seven of the acts of the year nineteen hundred and nine, shall be open only to the inspection of persons charged or likely to become charged with the payment of taxes in the case in which such paper, copy, affidavit, statement, letter or other information or evidence is filed, or their representatives, and to the tax commissioner, his deputy assistants and clerks and such other officers of the commonwealth and other persons as may, in the performance of their duties, have occasion to inspect the same for the purpose of assessing or collecting taxes.

S. 2. Nothing in this act shall be construed as limiting the duties imposed upon the supervisors of assessors by section six of part three of chapter four hundred and ninety of the acts of the year nineteen hundred and nine, or as prohibiting the use of such papers, copies, affidavits, statements, letters and other information and evidence in legal proceedings involving the assessment, collection or abatement of taxes.

S. 3. This act shall take effect upon its passage. [Approved April 29, 1911.]

### **Practice. — Forms.**

The tax commissioner requires the following data and gives the following information:—

#### **AFFIDAVIT OF EXECUTOR OF NON-RESIDENT.**

(2)\* That the total amount of property, real and personal, wherever situated, of which said decedent died seized or possessed, at its actual value on the date of h death was

REAL ESTATE, \$.....

PERSONAL ESTATE, \$.....

an itemized statement of which is hereto annexed, made a part hereof, and marked "Schedule A":

(3)\* That the total amount of property, real and personal, within the jurisdiction of Massachusetts, owned by said decedent at its actual value on the date of h death was

REAL ESTATE, \$.....

PERSONAL ESTATE, \$.....

an itemized statement of which is hereto annexed, made a part hereof, and marked "Schedule B":

(4) That at the time of h death the said decedent had no safe deposit box, individually or jointly, no bonds, public or private, no money, no real estate nor mortgages on property within the state of Massachusetts; no interest in any

\* In valuing mortgaged real estate in this item, the value of the equity alone is to be given.

business or co-partnership carried on therein; no shares of stock in National Banks situated therein nor in corporations organized and existing under the laws of Massachusetts; no interest in the estate of a deceased resident of Massachusetts; no claims against nor debts due from residents of Massachusetts; no deposits in banks, trust companies nor savings institutions in Massachusetts, in his own name, jointly or in trust; no jewelry, horses, carriages or furniture within said state; and was seized or possessed of or entitled to no other property of any kind whatsoever in the said state except as set forth in said Schedule B.

(5) That prior to his death the said decedent made no transfer of property within the jurisdiction of Massachusetts by deed, grant or gift (except *bona fide* sales for full consideration in money or money's worth), made or intended to take effect in possession or enjoyment after death; and the said decedent had no power of appointment over property within the jurisdiction of Massachusetts except as below stated:

.....  
.....  
.....

(6) a. That the amount of debts incurred by the decedent and due Massachusetts creditors at the time of his death (not including debts secured by mortgage on real estate) was \$.....

b. That the amount of debts incurred by the decedent and payable at the time of his death other than above (not including debts secured by mortgage of real estate) was \$.....

c. That the expenses of administration in Massachusetts are \$.....

d. That all other expenses of administration and funeral charges are \$.....

That hereto annexed, marked "Schedule C" and made a part hereof is an itemized statement of the above debts and expenses.

Total, \$.....

(7) That the amount of succession tax paid, guaranteed or secured by law in the state of the domicile of the decedent on the personal estate within the jurisdiction of Massachusetts is as follows:\*

PROPERTY	VALUE	RATE OF TAX %	AMOUNT OF

\*(No statement as to succession tax paid, guaranteed or secured in the state of the domicile of the decedent need be made unless such state by law exempts from the application of its succession tax laws, property within its jurisdiction belonging to Massachusetts decedents.

(8) That annexed hereto, marked "Schedule D," and made a part hereof, is a true copy of the last will and testament of the decedent, as allowed by the court of domicile.

(9) That all the persons who are mentioned in the will of the decedent or who take any share of the property with the amounts of their respective shares and their relationships to the decedent; also the dates of birth of life tenants and remaindermen, are as follows: —

### SCHEDULE "B."

#### Assets Within the Jurisdiction of Massachusetts.

*Note:* — The following kinds of property are within the scope of the legacy and succession tax law: —

1. Money, bonds, stock in trade, furniture and all kinds of tangible property which were physically present in Massachusetts at the date of death of the decedent.
2. Real estate and mortgages on real estate situated in Massachusetts.
3. Shares in corporations incorporated under the laws of Massachusetts, including railroad companies incorporated under the laws of Massachusetts and one or more other states.
4. Interests in co-partnerships doing business in Massachusetts or owning stock in trade, fixtures or book accounts with residents of Massachusetts.
5. Choses in action against residents of Massachusetts.
6. Deposits in Savings Banks, National Banks, Trust Companies, etc., doing business in Massachusetts.
7. Shares of National Banks located in Massachusetts.

### RESIDENT DECEDENT.

#### AFFIDAVIT OF DEBTS, EXPENSES, ETC.

Estate of .....

Late of .....

#### INSTRUCTIONS.

**In General:** No debt or expense of any kind should be included in this affidavit unless the same is a proper charge against PRINCIPAL of the estate. Fees based on *income* are not allowable.

**Mortgage Notes** secured by real estate of the decedent should not be included as debts — the equity only of such real estate having been valued for taxation.

**Local Taxes** and assessments should not be included as debts unless the same were assessed as of May first (or April first, if on or after April first, 1910) *prior* to the death of the decedent. *When taxes or water rates are included give the year for which they were assessed.*

**Foreign Legacy Taxes** should not be included as debts as the same are deducted in another manner. The original documents showing the details of the assessment of the foreign tax, together with the receipt for its payment, should be enclosed for the inspection of the tax commissioner. These papers will be returned after examination.

#### INFORMATION GIVEN ON VALUATION.

**The Valuation** herewith enclosed, after deductions for debts, funeral expenses and expenses of administration, constitutes the basis upon which the inheritance tax, if any, will be computed.

**This Valuation Becomes Final** unless an appeal is taken within three months from the date thereof.

**The Inheritance Tax Becomes Due** at the expiration of **two years** from the date of giving bond.

**The Tax Upon Future Interests** (remainders after life estates or terms of years) becomes due at the expiration of **one year** from the date the gift vests in possession or enjoyment. The tax may be paid upon the present worth of future interests at any time upon request by the persons entitled. A form for such request will be furnished.

**If Certification for Immediate Payment is Desired** the tax commissioner should be furnished with a waiver of appeal from the enclosed valuation, and an affidavit of the debts, expenses, etc., on the enclosed form. In any event this affidavit should be furnished at least two weeks before the tax becomes due to allow for computation.

**If Succession Taxes Have Been Paid in Other States** on any of the property of the decedent, the original receipts and other papers showing the details of the assessment of such tax should be forwarded to this department for examination. The same will be returned after inspection.



## MICHIGAN.

### In General.

Michigan's first inheritance tax law, enacted in 1893, was held unconstitutional. The present statute dates from 1899, with important amendments in 1903, 1907 and 1909. An interesting feature is that in the case of direct inheritances personal property only is taxed. The exemptions apply to individual shares, not to the estate as a whole.

The Michigan statute seems to contain no penalty or lien and so it would seem not to be collectible against the estates of non-resident stockholders in Michigan corporations. For example, Calumet & Hecla and Osceola mining stock can be transferred without reference to the state authorities.

However, Michigan attempts to tax stock of a Michigan corporation owned by a non-resident wherever held. It taxes registered bonds of a Michigan corporation as well. A person or corporation that transfers or delivers securities or assets of a non-resident before the tax is paid is responsible for the tax.

Michigan taxes stock or bonds of a foreign corporation owned by a non-resident if the certificates are kept in Michigan. It is the practice to require an inventory of the entire estate before permission is given to transfer securities of a Michigan corporation.

### List of Statutes.

1893.	Statutes of Michigan,	c. 205,	p. 344.
1899.	" "	"	c. 188, p. 284, ss. 1 to 21.
1903.	" "	"	No. 195, p. 277, s. 1.
1907.	" "	"	c. 155, p. 199.
1907.	" "	"	c. 328, p. 475.
1909.	" "	"	c. 44, p. 70.
1909.	" "	"	c. 298, p. 700.
1911.	" "	"	c. 73, p. 105.

### Constitutional Limitations.

#### Michigan Constitution 1850, a. 14.

S. 1. All specific state taxes, except those received from the mining companies of the upper peninsula, shall be applied in paying the interest upon the primary school, university and other educational funds, and the interest and principal of the state debt, in the order herein recited, until the extinguishment of the state debt, other than the amounts due to educational funds, when such specific

taxes shall be added to, and constitute a part of the primary school interest fund. The legislature shall provide for an annual tax, sufficient with other resources, to pay the estimated expenses of the state government, the interest of the state debt, and such deficiency as may occur in the resources.

S. 11. The legislature shall provide a uniform rule of taxation except on property paying specific taxes, and taxes shall be levied on such property as shall be prescribed by law.

S. 14. Every law which imposes, continues or revives a tax shall distinctly state the tax, and the object to which it is to be applied; and it shall not be sufficient to refer to any other law to fix such tax or object.

S. 11 (as amended in 1900). The legislature shall provide a uniform rule of taxation, except on property paying specific taxes, and taxes shall be levied on such property as shall be prescribed by law: Provided, that the legislature shall provide a uniform rule of taxation for such property as shall be assessed by a state board of assessors, and the rate of taxation on such property shall be the rate which the state board of assessors shall ascertain and determine is the average rate levied upon other property upon which *ad valorem* taxes are assessed for state, county, township, school and municipal purposes.

### How to Test the Validity of the Statute.

In *Chambe v. Durfee*, 100 Mich. 112, 58 N. W. 661, and in *Union Trust Co. v. Durfee*, 125 Mich. 487, 84 N. W. 1101, 7 Detroit Leg. N. 597, the question of the constitutionality of the statute was raised by a writ of prohibition brought against the probate court to enjoin that court from collecting the tax.

## THE UNCONSTITUTIONAL STATUTE OF 1893.

Mich. St. 1893, c. 205. Approved June 1, 1893.

S. 1. The people of the state of Michigan enact, That after the passage of this act a tax shall be and is hereby imposed upon the transfer of any property, real or personal, of the value of five hundred dollars or over, or of any interest therein or income therefrom, in trust or otherwise, to persons or corporations, on real or personal property, in the following cases:—

1. When the transfer is by will or by the intestate laws of this state from any person dying seized or possessed of the property while a resident of this state.

2. When the transfer is by will or intestate law, of property within the state, and the decedent was a non-resident of the state at the time of his death.

3. When the transfer is of property made by a resident or by a non-resident, when such non-resident's property is within this state, by deed, grant, bargain, sale or gift made in contemplation of the death of the grantor, vendor or donor, or intended to take effect, in possession or enjoyment at or after such death. Such tax shall also be imposed when any such person or corporation becomes beneficially entitled, in possession or expectancy, to any property or the income thereof by any such transfer, whether made before or after the passage of this act. Such tax shall be at the rate of five per cent upon the clear market value of such property, except as otherwise prescribed in the next section.

Sa. 2 to 20 cover the assessment, collection and payment of the tax.

S. 21 defines the words "estate" and "property" and "transfer."

This statute is unconstitutional in that it provides that the proceeds of the tax shall be paid into the state treasury for the use of the state and shall be applicable to the expenses of the state government, and to such other purposes as the legislature shall by law direct. Mich. Const. a. 14, s. 14, provides that every tax law shall distinctly state the tax and the object to which it is to be applied. Mich. Const. a. 14, s. 1, provides that all specific state taxes except mining taxes shall be applied in paying the interest upon educational debts and the principal and interest of the state debt.

The court holds that the collateral inheritance tax, if it is a specific tax, is unconstitutional as in violation of this provision of the constitution. If the inheritance tax is a tax upon property it was conceded that it violated the provisions of the Michigan constitution requiring uniformity. The court further finds that the whole act must be held unconstitutional, as the money to be raised under it cannot be applied as the act provides, and it is fair to assume that the statute would not have met the approval of the legislature had the moneys arising from it been appropriated as provided by the constitution. *Chambe v. Durfee*, 100 Mich. 112, 58 N. W. 661.

### THE PARTIALLY VALID STATUTE OF 1899.

**Mich. St. 1899, c. 188.** Approved May 2, 1899.

**AN ACT TO PROVIDE FOR THE TAXATION OF INHERITANCES,** transfers of property by will, transfer of property by the intestate laws of this state, or transfers of property by deed, grant, bargain, sale or gift, made in contemplation of the death of the grantor, vendor or donor, or intended to take effect in possession or enjoyment at or after such death.

#### **Title.**

This title is sufficient within Mich. Const. a. 14, s. 14, as the tax is clearly defined and no other law is referred to either to fix the tax or its object. It is imposed upon everybody who is not exempt. So the reference in section 11 to mortality tables to ascertain the value of future interests does not change the rule of taxation or modify it, but only prescribes a rule of estimating the values and is valid within the constitution. *Union Trust Co. v. Durfee*, 125 Mich. 487, 84 N. W. 1101, 7 Detroit Leg. N. 597.

**Transfers Taxable. — Rate.**

S. 1. That after the passage of this act a tax shall be and is hereby imposed upon the transfer of any property, real or personal, of the value of five hundred dollars or over, or of any interest therein or income therefrom, in trust or otherwise, to persons or corporations not exempt by law from taxation on real or personal property, in the following cases: —

*First*, When the transfer is by will or by the intestate laws of this state from any person dying seized or possessed of the property while a resident of this state.

*Second*, When the transfer is by will or intestate law of property within the state, and the decedent was a non-resident of the state at the time of his death.

*Third*, When the transfer is of property made by a resident or by a non-resident, when such non-resident's property is within this state by deed, grant, bargain, sale or gift made in contemplation of the death of the grantor, vendor or donor or intended to take effect, in possession or enjoyment at or after such death. Such tax shall also be imposed when any such person or corporation becomes beneficially entitled in possession or expectancy to any property or the income thereof by any such transfer, whether made before or after the passage of this act. Such tax shall be at the rate of five per cent upon the clear market value of such property, except as otherwise prescribed in the next section.

[See further, notes to section 21, *post*, p. 613.]

**Based on the Early New York Statute.—Construction.**

This statute is nearly identical with the New York statute prior to the amendments made in 1892 and was incorporated from the state of New York together with the construction which had been given to the New York statute by the courts of New York. *Stellwagen v. Durfee*, 130 Mich. 166, 89 N. W. 728, 8 Detroit Leg. N. 1204; *Miller v. McLaughlin*, 141 Mich. 425, 104 N. W. 777, 12 Detroit Leg. N. 501; *In re Stanton*, 142 Mich. 491, 105 N. W. 1122, 12 Detroit Leg. N. 829.

**Constitutionality.**

This statute is valid as it is not a tax on property but is a specific tax on a privilege, and it is not void on the ground that the amount of the tax is based on the value of the property which is the subject of the privilege.

The act is not void on the ground that it does not provide for a personal notice and opportunity to resist this assessment and that it therefore takes private property without due process of law. This loses sight of the fact that it is not taking the property of the legatee, but is imposing a condition upon the acquisition of property.

This act was attacked on the ground of non-uniformity on account of its progressive rate and the court thinks there is much force in the point, but upholds the validity of the tax, following

*Magoun v. Savings Bank*, 170 U. S. 301, 18 Sup. Ct. 601; *Union Trust Co. v. Durfee*, 125 Mich. 487, 84 N. W. 1101, 7 Detroit Leg. N. 597.

### **Not Retroactive. — Remainder Interests.**

Where the testator died in 1865, devising his estate to life tenants and on the death of the life tenants to their children, a transfer on the death of a life tenant after the passage of the act of 1899 is not subject to the inheritance tax. The court cites and follows New York cases construing the New York inheritance law, as follows: *In re Seaman*, 147 N. Y. 69; *Matter of Pell*, 171 N. Y. 48, 57 L. R. A. 540, 89 Am. St. Rep. 791; *Miller v. McLaughlin*, 141 Mich. 425, 104 N. W. 777, 12 Detroit Leg. N. 501.

### **Double Taxation Upheld.**

Personal property of a non-resident decedent may be taxed in Michigan where it is actually situated within the state of Michigan at the death of the testator although the same property has already paid an inheritance tax under the law of New York, on the theory that the situs of the personal estate is the domicile of the testator. *In re Stanton*, 142 Mich. 491, 105 N. W. 1122, 12 Detroit Leg. N. 829.

### **Stock Actually Within the State.**

Where a non-resident owned stock in an Illinois corporation whose business office and all of whose property was situated in the state of Illinois the stock is not taxable under the Michigan statute although the stock appeared to be actually within the state at the time of the death of the testator. *In re Stanton*, 142 Mich. 491, 105 N. W. 1122, 12 Detroit Leg. N. 829.

### **Land Contracts of Non-Resident.**

Where the testator was domiciled and resided in New York at her death and owned certain land in Michigan and had made a contract to sell this land, but the title remained in the testator at her death, these land contracts were taxable to the estate of the decedent as personal property under this statute. *In re Stanton*, 142 Mich. 491, 105 N. W. 1122, 12 Detroit Leg. N. 829.

*In re Stanton*, 142 Mich. 491, was cited as holding that an inheritance tax may be levied in this state upon notes and mortgages and contracts relating to land in this state owned by a resident of

another state, but which notes and mortgages have always been kept in Michigan for the purpose of collection and reinvestment though they might have been temporarily taken to New York. This seems to be predicated upon the theory that the state where such property has situs may control the right of succession and practically does so, so that the transfer depends upon its laws. *In re Merriam*, 147 Mich. 630, 9 L. R. A. (N. S.) 1104, 111 N. W. 196, 14 Detroit Leg. N. 6, 118 Am. St. Rep. 561.

### **Non-Resident's Mortgage on Michigan Land.**

Where a resident of New Jersey died possessed of a promissory note secured by a mortgage upon real estate in Michigan and both note and mortgage were in the possession of the testator in New Jersey up to the time of his death, the debt is subject to the succession tax, as there was a credit secured by the mortgage on lands in Michigan and the evidence of indebtedness had a situs in Michigan.

The court distinguishes the case from the *Matter of Bronson*, 150 N. Y. 1, which held that bonds and certificates of stock in a New York corporation owned by and in possession of a non-resident, at his domicile out of the state, at the time of his death, were not subject to taxation, as in the case at bar. There was a credit secured by a mortgage on the lands in Michigan and the evidence of indebtedness, namely the mortgage on Michigan land, had a situs in Michigan. *In re Merriam*, 147 Mich. 630, 9 L. R. A. (N. S.) 1104, 111 N. W. 196, 14 Detroit Leg. N. 6, 118 Am. St. Rep. 561. The court refuses to follow *Matter of Preston*, 75 N. Y. App. Div. 250.

### **Exceptions and Limitations.**

S. 2. When the property or any beneficial interest therein passes by any such transfer to or for the use of any father, mother, husband, wife, child, brother, sister, wife or widow of a son or the husband of a daughter, or to or for the use of any child or children adopted as such in conformity with the laws of this state, of the decedent, grantor, donor or vendor, or to any person to whom any such decedent, grantor, donor or vendor for not less than ten years prior to such transfer stood in the mutually acknowledged relation of a parent, or to or for the use of any lineal descendant of such decedent, grantor, donor or vendor born in lawful wedlock, such transfer of property shall not be taxable under this act, unless it is personal property of the value of five thousand dollars or more, in which case it shall be taxable under this act at the rate of one per centum upon the clear market value of all such property in excess of five thousand dollars.

The exceptions of section 2 of the act applied to each individual share and not to the entire estate, following the construction placed

upon the New York statute in *In re Cager*, 111 N. Y. 343. *Stellwagen v. Durfee*, 130 Mich. 166, 89 N. W. 728, 8 Detroit Leg. N. 1204.

### **Exemptions Valid.**

The exemptions provided do not render the statute void, as there is as much authority to make exemptions from this tax as from any other. *Union Trust Co. v. Durfee*, 125 Mich. 487, 84 N. W. 1101, 7 Detroit Leg. N. 597.

There is no difference in principle between an exemption given to direct inheritances and a progressive tax. The same inequality exists in the one case as in the other; and if there is unjust discrimination in the one case there is also in the other. The difference is one of degree and not of principle. *In re Fox*, 154 Mich. 5, 11, 117 N. W. 558.

Ss. 3 to 19 cover the assessment, collection and payment of the tax.

### **Provisions for Collection Sufficient.**

The fact that there is no established practice of the probate court in like cases made and provided for the service of citations out of that court if it is a fact, does not make the law unconstitutional. If the executor does not perform his duties the method usual in such cases should doubtless prove efficacious. The practice prescribed by statute to enforce collection seems clear enough. *Union Trust Co. v. Durfee*, 125 Mich. 487, 84 N. W. 1101, 7 Detroit Leg. N. 597.

### **Duties of Probate Judge.**

This statute does not impose duties not judicial upon the judge of probate. The duties imposed are necessarily incident to the settlement of estates and may be properly performed by the judge of probate. *Union Trust Co. v. Durfee*, 125 Mich. 487, 84 N. W. 1101, 7 Detroit Leg. N. 597, quoting *State v. Gloucester Circuit Judge*, 50 N. J. L. 585, 611, 15 A. 272, 1 L. R. A. 86.

### **Application of Proceeds Void.**

S. 20. All taxes levied and collected under this act shall be paid into the state treasury, and be applied in paying the interest upon the primary school, university and other educational funds, and the interest and principal of the state debt in the order herein recited, until the extinguishment of the state debt, other than the amounts due to educational funds, when such taxes shall be added to and constitute a part of the primary school interest fund, in pursuance of and in compliance with section one of article fourteen of the constitution of this state.

Mich. St. 1899, c. 188, is unconstitutional only in so far as it provides that the money raised shall be applied to the payment of fees, expenses and cost of possible litigation.

Mich. Const., a. 14, s. 1, provides that all specific state taxes shall be applied in paying interest upon the school fund, etc., and therefore the provision in the statute as to the application of the proceeds is void. But the court holds that the remainder of the act is not so dependent upon it as to require holding the entire act void. *Union Trust Co. v. Durfee*, 125 Mich. 487, 84 N. W. 1101, 7 Detroit Leg. N. 597.

### Definitions.

S. 21. The words "estate" and "property" as used in this act shall be taken to mean the property or interest therein of the testator, intestate, grantor, bargainor or vendor, passing or transferred to those not herein specifically exempted from the provisions of this act, and not as the property or interest therein passing or transferred to individual legatees, devisees, heirs, next of kin, grantees, donees, or vendees and shall include all property or interest therein whether situated within or without this state, over which this state has any jurisdiction for the purposes of taxation. The word "transfer" as used in this act shall be taken to include the passing of property or any interest therein in possession or enjoyment, present or future by inheritance, descent, devise, bequest, grant, deed, bargain, sale or gift, in the manner herein prescribed. The words "county treasurer" and "prosecuting attorney" as used in this act shall be taken to mean treasurer or prosecuting attorney of the county having jurisdiction as provided in section ten of this act.

[See further, notes to section 1, *ante*, p. 609.]

### Not Confined to Property which the State has Selected for Taxation.

The legislature intended the tax to be measured by the property which it is within the power of the state to tax and not by property which state policy had selected for the purposes of general taxation. This intention has been found in the New York act of which the Michigan statute is a copy. *Matter of Whiting*, 150 N. Y. 27, 44 N. E. 715; *In re Stanton*, 142 Mich. 491, 105 N. W. 1122, 12 Detroit Leg. N. 829.

There are three reasons for holding that the legislature intended the tax to be measured by property which it is within the power of the state to tax, and not by property which state policy has selected for purposes of general taxation. One reason is that the statute is adopted, together with a judicial interpretation of the language above quoted, from the state of New York. *Stellwagen v. Wayne Probate Judge*, 130 Mich. 168. And, as interpreted by the courts



of New York, the design of the legislature to tax the transfer of everything which it has the power to tax is found in the act. *Matter of Whiting*, 150 N. Y. 27, 34 L. R. A. 232, 55 Am. St. Rep. 640; *Matter of Houdayer*, 150 N. Y. 37, 34 L. R. A. 235; *Matter of Sherman*, 153 N. Y. 1; *Matter of Hellman*, 174 N. Y. 254. See also *Blackstone v. Miller*, 188 U. S. 189; *Plummer v. Coler*, 178 U. S. 115. The second reason is that a policy of general taxation, which recognizes, to some extent at least, the rule of universal succession and the theory of taxation of personal property generally, at the domicile of the owner, is not logically controlling of the interpretation of a statute imposing a tax upon a right of succession or upon a transfer of property which can only be tangible and enforceable — be made effective — in the jurisdiction, and by virtue of the laws and institutions of the situs of the property. A third reason is that, as a tax upon succession or transfer, uniformity of operation and an equal measure of the tax to the property of residents and non-residents can be, with no other construction, secured. There is property situated within the state, belonging to non-residents, which the state does not tax, generally (*Village of Howell v. Gordon*, 127 Mich. 517; *Baars v. City of Grand Rapids*, 129 Mich. 572), though it might tax it (*Catlin v. Hull*, 21 Vt. 152; *New Orleans v. Stempel*, 175 U. S. 309). Property of the same class owned by residents is taxed, generally. *Per Ostrander, J.*, in *In re Stanton*, 142 Mich. 491, 105 N. W. 1122, 12 Detroit Leg. N. 829.

### **Tax is on the Entire Estate of the Decedent.**

This section places the tax on each transfer and merges all the taxes into one upon the entire property. The court follows the construction of this section given in the case *In re Hoffman*, 143 N. Y. 327, 38 N. E. 311, where it was held that the section was enacted for the express purpose of making plain the intention that the exemptions should be taken from the estate of the decedent as a whole and not from each interest transferred. As so construed the section is constitutional. *Stellwagen v. Durfee*, 130 Mich. 166, 173, 89 N. W. 728, 8 Detroit Leg. N. 1204.

Mich. St. 1899, c. 188, consists of twenty-one sections. The first twenty sections are carefully drawn, and leave but one conclusion possible, viz.: that each transfer stands by itself, that the tax is imposed upon each transfer, and that no tax is imposed upon property. It recognizes the personal and individual right of each devisee, heir, grantee or donee to receive and enjoy the property

transferred to him upon the payment of the tax imposed upon his right to receive it. Each devise, gift, conveyance, or right of inheritance is complete in itself, without any regard to the others. Each transferee is entitled to receive his property upon payment of the tax, or upon giving bond as provided in section 7. Section 3 gives a lien only upon the property of each transferee. This is conceded. But the sole claim is that under section 21, — the last section of the act, — entitled "Definitions," a definition has been given to the words "estate" and "property," which completely nullifies the language of the other sections of the act, overrules legal and popular definitions, and imposes the tax upon the entire estate of every decedent, grantor, donor or vendor of property. The section attempts to declare that the words "transfer to or for the use of any father, mother, husband, wife, child, brother, sister," etc., used in section 2, cover all transfers, and impose a tax upon the entire estate, and that any transferee desiring to receive his own must pay the tax upon all if the others do not pay. *Per* Grant, J., dissenting, in *Stellwagen v. Durfee*, 130 Mich. 166, 89 N. W. 728, 8 Detroit Leg. N. 1204.

### THE VALID STATUTE OF 1903.

Mich. St. 1903, c. 195. Approved June 9, 1903. (Amends ss. 1-19 and 21 of the Statute of 1899, No. 188).

#### Transfers Taxable. — Rates.

S. 1. That after the passage of this act a tax shall be and is hereby imposed upon the transfer of any property, real or personal, of the value of one hundred dollars or over, or of any interest therein or income therefrom, in trust or otherwise, to persons or corporations not exempt by law from taxation on real or personal property, in the following cases:—

*First*, When the transfer is by will or by the intestate laws of this state from any person dying seized or possessed of the property while a resident of this state;

*Second*, When the transfer is by will or intestate law of property within the state, and the decedent was a non-resident of the state at the time of his death;

*Third*, When the transfer is of property made by a resident or by non-resident, when such non-resident's property is within this state, by deed, grant, bargain, sale or gift made in contemplation of the death of the grantor, vendor or donor or intended to take effect, in possession or enjoyment at or after such death. Such tax shall also be imposed when any such person or corporation becomes beneficially entitled in possession or expectancy to any property or the income thereof by any such transfer, whether made before or after the passage of this act. Such tax shall be at the rate of five per cent upon the clear market value of such property, except as otherwise prescribed in the next section.

### Constitutionality.

Because of the peculiar provisions of their respective constitutions the courts of Minnesota, New Hampshire, Ohio and Wisconsin are not in entire harmony in their decisions with other courts. As was stated by the supreme court of Minnesota in *Drew v. Tift*, 79 Minn. 187, 47 L. R. A. 525, Minnesota is the only state whose constitution in express terms limits the power of the legislature in the laying of an inheritance tax. *In re Fox*, 154 Mich. 5, 117 N. W. 558, 15 Detroit Leg. N. 674. (Cf. however, Alabama.)

The courts agree that the constitutional rule of equality and uniformity is complied with if all the members of the same class are treated alike. The differences among courts arise only in the application of that rule. Adopted *per Sessions, J.*, in *In re Fox*, 154 Mich. 3, 13, 117 N. W. 558. The following cases are cited to show that an unequal graduated rate is unconstitutional: *Black v. State*, 113 Wis. 205; *State v. Ferris*, 53 Ohio St. 314; *Drew v. Tift*, 79 Minn. 187; *State v. Bazille*, 87 Minn. 503. In the recent case, *State v. Bazille*, 97 Minn. 11, the court has explained and somewhat modified its former holdings. The same may be said of the Wisconsin and Ohio courts in their recent utterances. See *Nunnemacher v. State*, 129 Wis. 190; *State v. Guilbert*, 70 Ohio St. 229; *In re Fox*, 154 Mich. 5, 12.

### No Deduction for Mortgage Indebtedness.

The court on rehearing overrules its opinion given in 154 Mich. 5, on the question whether in the determination of an inheritance tax a debt of the deceased secured by real estate mortgage should be deducted from a personal estate in determining the amount upon which the tax is to be paid. The court is convinced that in reaching the conclusion in the former case that no deductions should be made on account of such mortgage indebtedness, it failed to give sufficient force to the distinction which exists between New York and Michigan as to the law for the distribution of estates. It finds that it is the law in Michigan that the net personal estate for distribution consists of the personal property after the payment of debts and expenses, including the debts secured by mortgage on real estate, while by the New York statute the heir or devisee taking real estate is bound to satisfy and discharge any mortgage upon it out of his own property. *In re Fox*, 159 Mich. 420, 124 N. W. 60, 16 Detroit Leg. N. 943. McAlvay, J., dissenting. See *In re Fox*, 154 Mich. 5, 117 N. W. 558, 15 Detroit Leg. N. 674.

**Exemptions.**

S. 2. When the property or any beneficial interest therein passes by any such transfer to or for the use of one or more of the following named persons: Father, mother, husband, wife, child, brother, sister, wife or widow of a son, or the husband of a daughter, or to or for the use of any child or children adopted as such in conformity with the laws of this state of the decedent, grantor, donor or vendor, or to or for the use of any persons to whom any such decedent, grantor, donor or vendor, for not less than ten years prior to such transfer stood in the mutually acknowledged relation of a parent, or to or for the use of any lineal descendant of such decedent, grantor, donor or vendor, such transfer of property shall not be taxable under this act, unless it is personal property of the clear market value of two thousand dollars or over, in which case the entire transfer shall be taxed under this act at the rate of one per cent upon the clear market value thereof. The exemptions of sections one and two of this act shall apply and be granted to each beneficiary's interest therein, and not to the entire estate of a decedent.

The exemption where the value of the property transferred is less than two thousand dollars and taxing the entire transfer where its value is two thousand dollars or more is constitutional. *In re Fox*, 154 Mich. 5, 117 N. W. 558.

**Lien. — Payment. — Receipts.**

S. 3. Every such tax shall be and remain a lien upon the property transferred until paid, and the person to whom the property is so transferred and the administrator, executor, and trustee of every estate so transferred, shall be personally liable for such tax until its payment; except that the executor or administrator shall not be personally liable for the tax upon a reversion or remainder consisting of real estate where the election provided for in section seven is made, and where in pursuance of the order of the probate court the estate had been distributed by the executor or administrator prior to June first, nineteen hundred and one, and the tax had not been fixed by the court. The tax shall be paid to the treasurer of the county in which the probate court has jurisdiction as herein provided, and said treasurer shall make out, upon forms prescribed by the auditor general, receipts in duplicate, and immediately send the same to the auditor general, and accompany them with the amount received in funds by law receivable at the state treasury. It shall then be the duty of the auditor general to charge the treasurer so receiving the tax with the amount thereof and credit him with payment of same to state treasurer, and in case the determination of said tax and said receipt are believed to be in accordance with law, seal said receipts with the seal of his office and countersign the same and return one of them to the county treasurer who shall file and preserve it in his office, and immediately send the other of such receipts to the judge of probate who shall file and preserve it in his office, whereupon it shall be a voucher in settlement of the accounts of the executor, administrator or trustee of the estate upon which the tax is paid. At the same time the auditor general shall send to the county treasurer, state treasurer's receipt countersigned as required by law, showing payment of tax. The sealing and countersigning of said receipts shall not prejudice the right of the state to a review of the determination fixing the tax. The receipts issued under this section

shall show whether the amount paid is a payment of the tax upon any beneficial interest or upon the entire transfer. But no executor, administrator or trustee of an estate, in settlement of which a tax is due under the provisions of this act, shall be discharged and the estate or trust closed by a decree of the court, unless there shall be produced a receipt signed by the county treasurer and sealed and countersigned by the auditor general, or a copy thereof, certified by the county treasurer, or unless payment of the tax has been deferred as prescribed by section seven of this act. When any such tax shall be paid to the county treasurer, he shall, in addition to the duplicate receipts required to be issued upon the form prescribed by the auditor general, give the executor, administrator, trustee or other person paying the tax, a simple receipt for the amount received. All taxes imposed by this act shall accrue and be due and payable at the time of transfer, which is the date of death: Provided, however, that taxes upon the transfer of any estate, property or interest therein limited, conditioned, dependent or determinable upon the happening of any contingency or future event, by reason of which the clear market value thereof can not be ascertained at the time of the transfer as herein provided, shall accrue and become due and payable when the persons or corporations beneficially entitled thereto shall come into actual possession or enjoyment thereof.

Sections 3 and 5, providing that it is the duty of the executor to collect the inheritance tax and that he shall not deliver any property subject to tax to any person until the tax assessed has been paid to him or to the county treasurer, do not prevent the institution of an action in ejectment by the devisees. No delivery of possession of real estate to the devisees was necessary. Under the will they took title subject to the right of the executor to take possession for the purposes of administration. The rights of the state are of no concern to the descendants. *Weller v. Wheelock*, 155 Mich. 698, 118 N. W. 609.

### **Non-Resident's Interests in Michigan Land.**

The testator died in New York, of which state he was a resident, and administration of the estate was granted in New York and ancillary proceedings were had in Michigan. The Michigan authorities attempted to hold for an inheritance tax mortgages, notes and land contracts. All the devisees, legatees and the heirs at law resided in New York. At the time of the death of the testator all the mortgages, notes, land contracts and papers representing property in the state of Michigan were in the actual possession of the testator at his residence in New York and were habitually kept by him at his residence in New York. The mortgages were recorded in Michigan. The court holds that this property is subject to a tax in Michigan in *In re Rogers*, 149, Mich. 305, 112 N. W. 931 11 L. R. A. (N. S.) 1134, 119 Am. St. Rep. 677, 14 Detroit Leg.

N. 444, following *In re Stanton*, 142 Mich. 491, 105 N. W. 1122; *In re Merriam*, 147 Mich. 630, 9 L. R. A. (N. S.) 1104 n., 118 Am. St. Rep. 561; *Blackstone v. Miller*, 188 U. S. 189, 23 Sup. Ct. 277. The court remarks that the case of *Gilbert v. Oliver*, 129 Iowa 568, 4 L. R. A. (N. S.) 953, is not in harmony with *In re Stanton*, 142 Mich. 491, 105 N. W. 1122.

The court remarks that the mortgagee could not preserve his lien without complying with the registry law of Michigan; that the debts secured cannot be collected without the aid of the laws of Michigan; that the estate of the testator cannot be properly administered or closed without ancillary letters of administration obtained under the laws of Michigan; and therefore it is subject to an inheritance tax in Michigan.

It was claimed that the situs of personal property was the domicile of the owner — mortgages, notes and land contracts and papers representing property in Michigan. "Several authorities are cited in support of this claim, and it is insisted the case is controlled by the Iowa case of *Gilbertson v. Oliver*, 129 Iowa 568, 4 L. R. A. (N. S.) 953. In that case the justice writing the opinion said: 'The controversy presents for determination but one legal question, namely: Was the property of the deceased within the jurisdiction of this state at the time of her death? There is a conflict in the adjudicated cases as to whether such evidences of indebtedness are taxable at the domicile of the owner, or whether the actual situs of such property, and not the domicile of the owner, determines the liability to taxation.' The great weight of authority, however, supports the holding of our own cases that this species of personal property, which is in a sense intangible and incorporeal, is taxable at the domicile of the owner, and not elsewhere, unless the owner has himself given it a different situs." *Per Moore, J.*, in *In re Rogers*, 149 Mich. 305, 112 N. W. 931, 11 L. R. A. (N. S.) 1134, 14 Detroit Leg. N. 444, 119 Am. St. Rep. 677.

The court cites, however, *In re Stanton's Estate*, 142 Mich. 491, and *Blackstone v. Miller*, 188 U. S. 189, 23 Sup. Ct. 277.

[See notes to the Act of 1899, *ante*, pp. 610, 611. Section 4 is printed as amended on p. 623.]

### Power of Sale. — Deduction.

S. 5. Every executor, administrator, trustee or other person shall have full power to sell or mortgage so much of the property of the decedent as will enable him to pay such tax in the same manner as he might be entitled by law to do for the payment of the debts of a decedent or ward; except that in cases where the transfer is to two or more persons in common, and one or more of them shall

have paid his proportion of such tax, such executor, administrator, trustee or other person shall sell or mortgage only the interest of such of the persons to whom the property was transferred as have not paid the tax, to pay the tax due upon such share or shares. Any such administrator, executor, trustee or other person having in charge or in trust any legacy or property for distribution subject to such tax, shall deduct the tax therefrom; and within thirty days thereafter shall pay over the same to the county treasurer as herein provided. If such legacy or property be not in money, he shall collect the tax thereon as determined by the judge of probate from the person entitled thereto, unless such tax has been paid to the county treasurer. He shall not deliver or be compelled to deliver any specific legacy or property subject to tax under this act to any person until the tax assessed thereon has been paid to him or to the county treasurer. If any such legacy shall be charged upon or payable out of real property and is taxable under this act, the devisees charged with the payment of such legacy shall deduct such tax therefrom and pay it to the county treasurer or the administrator, executor or trustee. And the payment thereof shall be enforced by the executor, administrator or trustee, in the same manner as payment of the legacy might be enforced or by the attorney general or prosecuting attorney by the appropriate legal proceeding. If such legacy shall be given in money to any such person for a limited period, the administrator, executor, trustee or other person shall retain the tax upon the whole amount, but if not in money, he shall make such application to the court having jurisdiction of an accounting by him, to make an apportionment, if the case require it, of the sum to be paid by such legatee and for such further order relative thereto as the case may require.

[See note under section 3, *supra*, p. 618.]

### **Personal Property of Non-Residents.**

Mich. St. 1903, c. 195, amending section 21 of the Mich. St. 1899, c. 188, by eliminating from section 21 the words "over which this state has any jurisdiction for the purposes of taxation" has no effect to narrow the provisions of the statute as to the taxation of the personal property of non-residents. The court for that reason follows *In re Merriam*, 147 Mich. 630, 111 N. W. 196, 9 L. R. A. (N. S.) 1104, 14 Detroit Leg. N. 6, decided under the earlier act, as to the interests of non-residents in Michigan real estate. *In re Rogers*, 149 Mich. 305, 112 N. W. 931, 11 L. R. A. (N. S.) 1134, 14 Detroit Leg. N. 444, 119 Am. St. Rep. 677.

### **RECENT AMENDMENTS.**

Mich. St. 1907, No. 155, approved June 17, 1907, amends Mich. St. 1899, c. 188, ss. 3, 4, 11 and 19.

Mich. St. 1907, c. 328, approved June 28, 1907, amends Mich. St. 1899, c. 188, s. 21, as to the definition of property to read as in the present act, printed *post*, p. 621.

Mich. St. 1909, c. 44, approved April 21, 1909, amends Mich. St. 1899, c. 188, s. 19.

Mich. St. 1911, c. 73, approved April 13, 1911, amends Mich. St. 1899, c. 188, s. 18, making elaborate provisions as to the collection of the tax on property in the state belonging to a non-resident.

Mich. St. 1909, c. 298. Approved June 2, 1909.

AN ACT IN RELATION TO THE COLLECTION OF INHERITANCE TAXES IN CERTAIN CASES.

S. 1. No heir, legatee, beneficiary, trustee, executor, administrator or surety shall be held liable for any inheritance tax upon the transfer of property in any estate in which the property has been distributed by order of the court prior to January first, nineteen hundred five; nor where the executor or administrator or trustee has been discharged by order of the court prior to January first, nineteen hundred five; nor where the estate has been closed prior to January first, nineteen hundred five. All inheritance taxes which may have been assessed in any such estate as comes within the provisions of this act shall not be subject to enforcement, and all inheritance tax liens upon such property are hereby released.

**THE PRESENT ACT.**

Mich. St. 1899, c. 188, as amended.

AN ACT TO PROVIDE FOR THE TAXATION OF INHERITANCES, transfers of property by will, transfers of property by the intestate laws of this state, or transfers of property by deed, grant, bargain, sale or gift, made in contemplation of the death of the grantor, vendor or donor, or intended to take effect in position or enjoyment at or after such death.

**Taxable Transfers.**

S. 1. (As amended by St. 1903, c. 195.) That after the passage of this act a tax shall be and is hereby imposed upon the transfer of any property, real or personal, of the value of one hundred dollars or over, or of any interest therein or income therefrom, in trust or otherwise, to persons or corporations not exempt by law from taxation on real or personal property, in the following cases:—

*First*, When the transfer is by will or by the intestate laws of this state from any person dying seized or possessed of the property while a resident of this state;

*Second*, When the transfer is by will or intestate law of property within the state, and the decedent was a non-resident of the state at the time of his death,

*Third*, When the transfer is of property made by a resident or by non-resident; when such non-resident's property is within this state, by deed, grant, bargain, sale or gift made in contemplation of the death of the grantor, vendor or donor or intended to take effect, in possession or enjoyment at or after such death. Such tax shall also be imposed when any such person or corporation becomes beneficially entitled in possession or expectancy to any property or the income thereof by any such transfer, whether made before or after the passage of this act. Such tax shall be at the rate of five per cent upon the clear market value of such property, except as otherwise prescribed in the next section.

[See notes to the Act of 1899 and 1903, *ante*, pp. 609, 616.]



**Exemptions.**

S. 2. (As amended by St. 1903, c. 195.) When the property or any beneficial interest therein passes by any such transfer to or for the use of one or more of the following named persons: Father, mother, husband, wife, child, brother, sister, wife or widow of a son, or the husband of a daughter, or to or for the use of any child or children adopted as such in conformity with the laws of this state of the decedent, grantor, donor or vendor, or to or for the use of any persons to whom any such decedent, grantor, donor or vendor, for not less than ten years prior to such transfer stood in the mutually acknowledged relation of a parent, or to or for the use of any lineal descendant of such decedent, grantor, donor or vendor, such transfer of property shall not be taxable under this act, unless it is personal property of the clear market value of two thousand dollars or over, in which case the entire transfer shall be taxed under this act at the rate of one per cent upon the clear market value thereof. The exemptions of sections one and two of this act shall apply and be granted to each beneficiary's interest therein, and not to the entire estate of a decedent. [See notes to the Act of 1899 and 1903, *ante*, pp. 611, 617.]

**Lien. — Liabilities. — Payment. — When Tax Accrues.**

S. 3. (As amended by St. 1907, c. 155.) Every such tax and the interest thereon herein provided for shall be and remain a lien upon the property transferred until paid and the person to whom the property is so transferred and the administrator, executor, and trustee of every estate so transferred, shall be personally liable for such tax until its payment; except that the executor or administrator shall not be personally liable for the tax upon a reversion or remainder consisting of real estate where the election provided for in section seven is made. [Three lines in 1903 omitted here.] The tax shall be paid to the treasurer of the county in which the probate court has jurisdiction as herein provided, and said treasurer shall make out, upon forms prescribed by the auditor general, receipts in duplicate, and immediately send the same to the auditor general, and accompany them with the amount received in funds by law receivable at the state treasury. It shall then be the duty of the auditor general to charge the treasurer so receiving the tax with the amount thereof and credit him with the payment of same to state treasurer, and in case the determination of said tax and said receipt are believed to be in accordance with law, seal said receipts with the seal of his office and countersign the same and return one of them to the county treasurer who shall file and preserve it in his office and immediately send the other of such receipts to the judge of probate who shall file and preserve it in his office, whereupon it shall be a voucher in settlement of the accounts of the executor, administrator, or trustee of the estate upon which the tax is paid. At the same time the auditor general shall send to the county treasurer the state treasurer's receipt, countersigned as required by law, showing payment of tax. The sealing and countersigning of said receipts shall not prejudice the right of the state to a review of the determination fixing the tax. The receipts issued under this section shall show whether the amount paid is a payment of the tax upon any beneficial interest or upon the entire transfer. But no executor, administrator or trustee of an estate, in settlement of which a tax is due under the provisions of this act, shall be discharged and the estate or trust closed by a decree of the court, unless there shall be produced a receipt signed by the county treasurer and sealed and counter-

signed by the auditor general, or a copy thereof, certified by the county treasurer, or unless payment of the tax has been deferred as prescribed by section seven of this act. When any such tax shall be paid to the county treasurer, he shall, in addition to the duplicate receipts required to be issued upon the form prescribed by the auditor general, give the executor, administrator, trustee, or other person paying the tax, a simple receipt for the amount received. All taxes imposed by this act shall accrue and be due and payable at the time of transfer, which is the date of death: *Provided, however*, that taxes upon the transfer of any estate, property or interest therein limited, conditioned, dependent or determinable upon the happening of any contingency or future event, by reason of which the clear market value thereof cannot be ascertained at the time of the transfer as herein provided, shall accrue and become due and payable when the persons or corporations beneficially entitled thereto shall come into actual possession or enjoyment thereof.

[See notes to the Act of 1903, *ante*, p. 618.]

#### **Discount. — Interest.**

S. 4. (As amended by St. 1907, c. 155.) If in any case, whether such transfer shall take effect prior or subsequent to the taking effect of this act, such a tax is paid within twelve months from the accruing thereof, a discount of five per centum shall be allowed and deducted therefrom. If such tax is not paid within eighteen months from the accruing thereof interest shall be charged and collected thereon at the rate of eight per cent per annum from the time the tax accrued, unless by reason of claims made upon the estate, necessary litigation or other unavoidable cause of delay, such tax cannot be determined and paid as herein provided, in which case interest at the rate of six per cent per annum shall be charged upon such tax from and after the expiration of said eighteen months until the tax is determined, or could be determined and after the determination, or after the time it could be determined, interest at eight per cent per annum shall be charged until the date of the payment thereof. In all cases where payment is deferred as provided in section seven of this act, interest shall be charged at the rate of five per centum per annum from the accrual of the tax until the date of the payment thereof.

#### **Power of Sale. — Tax Deducted from Legacy.**

S. 5. (As amended by St. 1903, c. 195.) Every executor, administrator trustee or other person shall have full power to sell or mortgage so much of the property of the decedent as will enable him to pay such tax in the same manner as he might be entitled by law to do for the payment of the debts of a decedent or ward; except that in cases where the transfer is to two or more persons in common, and one or more of them shall have paid his proportion of such tax, such executor, administrator, trustee or other person shall sell or mortgage only the interest of such of the persons to whom the property was transferred as have not paid the tax, to pay the tax due upon such share or shares. Any such administrator, executor, trustee or other person having in charge or in trust any legacy or property for distribution subject to such tax, shall deduct the tax therefrom; and within thirty days thereafter shall pay over the same to the county treasurer as herein provided. If such legacy or property be not in money, he shall collect the tax thereon as de-

terminated by the judge of probate from the person entitled thereto, unless such tax has been paid to the county treasurer. He shall nor deliver or be compelled to deliver any specific legacy or property subject to tax under this act to any person. until the tax assessed thereon has been paid to him or to the county treasurer, If any such legacy shall be charged upon or payable out of real property and is taxable under this act, the devisee charged with the payment of such legacy shall deduct such tax therefrom and pay it to the county treasurer or the administrator, executor or trustee. And the payment thereof shall be enforced by the executor, administrator or trustee, in the same manner as payment of the legacy might be enforced, or by the attorney general or prosecuting attorney by the appropriate legal proceeding. If such legacy shall be given in money to any such person for a limited period, the administrator, executor, trustee or other person shall retain the tax upon the whole amount, but if not in money, he shall make such application to the court having jurisdiction of an accounting by him, to make an apportionment, if the case require it, of the sum to be paid by such legatee and for such further order relative thereto as the case may require.

[See notes to the Act of 1903, *ante*, p. 618.]

#### **Refund.**

S. 6. (As amended by St. 1903, c. 195.) If any debt shall be allowed against the estate of a decedent after the payment of any legacy or distributive share thereof, from which any such tax has been deducted or upon which it has been paid by the person entitled to such legacy or distributive share, and such person is required to refund the amount of such debts or any part thereof, an equitable proportion of the tax shall, upon the order of the court, be paid to him by the executor, administrator, trustee or other person, if the tax has not been paid to the county treasurer. When any amount of said tax shall have been paid erroneously into the county treasury by reason of the allowance of debts or otherwise, it shall be lawful for the auditor general, upon satisfactory proof by the order or certificate of the proper court of the allowance of such debts or of the reversal, correction or alteration, in accordance with law, of the order fixing such tax, to draw his warrant upon the state treasury for such erroneous payment, to be refunded to the executor, administrator, trustee, person or persons entitled to receive it, and charge the same to the fund which receives credit from the payment of taxes under the provisions of this act: *Provided, however*, that all applications for such refunding of erroneous tax shall be made within six months from the allowance of such debts or the reversal, correction or alteration of said order.

#### **When Bond Required in Case of Deferred Payments.**

S. 7. (As amended by St. 1903, c. 195.) Any person or corporation beneficially interested in the reversion or remainder of any property chargeable with a tax under this act, and executors, administrators and trustees thereof, may elect within one year from the transfer thereof as herein provided, not to pay such tax until the person or persons beneficially interested therein shall come into the actual possession or enjoyment thereof. If it be personal property, the person or persons so electing shall give a bond to the state in the penalty of three times the amount of such tax, with such sureties as the judge of probate of the proper county may approve, conditioned for the payment of such tax and interest thereon at such time and period as the person

or persons beneficially interested therein may come into the actual possession or enjoyment of such property, which bond shall be executed and filed and a full return of such property upon oath made to the probate court within one year from the date of the transfer thereof, as herein provided, and such bond must be renewed every five years: *Provided*, that the time fixed herein for making such election may be extended by the court in its discretion for a period not to exceed two years.

**When Bequest to Executors, etc., Subject to Tax.**

S. 8. (As amended by St. 1903, c. 195.) If a testator bequeath or devise his property to one or more executors or trustees in lieu of their commissions or allowances, to an amount exceeding the commissions or allowances prescribed by law for an executor or trustee, the excess in value of the property so bequeathed or devised above the amount of commissions or allowances prescribed by law shall be taxable under this act.

**Transfers by Foreign Executors, etc.**

S. 9. (As amended by St. 1903, c. 195.) If a foreign executor, administrator or trustee shall assign or convey any stock or obligation in this state standing in the name of a decedent, or in trust for a decedent, liable to any such tax, the tax shall be paid to the treasurer of the proper county on the transfer thereof; and any corporation, person or persons having control over any such assets, shall not deliver or transfer the same to any person or corporation other than an executor, administrator, trustee or guardian duly qualified under the laws of this state, until the tax to which the same is liable has been paid as provided in this act. No safe deposit company, trust company, bank or other institution, person or persons holding securities or assets of a decedent shall deliver or transfer the same to the executors, administrators, or legal representatives of said decedent or their assignees unless notice of the time and place of such intended delivery or transfer be served upon the county treasurer by said company, bank, institution, person or persons, at least five days prior to the said delivery or transfer. And it shall be lawful for the said county treasurer and is hereby made his duty personally or by representative to examine said securities or assets at the time of or prior to such delivery or transfer. Failure to serve such notice or to allow such examination on the delivery or transfer herein prohibited shall render such safe deposit company, bank, or other institution, person or persons liable to the payment of the tax due or to become due upon said securities or assets in pursuance of the provisions of this act.

The attorney general has ruled that any foreign executor or administrator must take out ancillary administration in the state for the purpose of settling the tax.

The Michigan statute seems to contain no penalty or liability on a domestic corporation transferring its own stock, and so the tax would seem not to be easily collectible against the estates of non-resident stockholders in Michigan corporations. For example, Calumet & Hecla and Osceola mining stock can be transferred without reference to the state authorities.

**Jurisdiction of Probate Court.**

S. 10. (As amended by St. 1903, c. 195.) The probate court of every county of this state having jurisdiction to grant letters testamentary or of administration upon the estate of a decedent whose property is chargeable with any tax under this act, or to appoint a trustee of such estate or any part thereof, or to give ancillary letters thereon, shall have jurisdiction to hear and determine all questions arising under the provisions of this act and to do any act in relation thereto authorized by law to be done by a judge of probate in other matters or proceedings coming within his jurisdiction, and if two or more probate courts shall be entitled to exercise any such jurisdiction, the judge of probate first acquiring jurisdiction hereunder shall retain the same, to the exclusion of every other judge of probate. Every petition for ancillary letters testamentary or ancillary letters of administration shall set forth a true and correct statement of all the decedent's property in this state and the value thereof.

**Appraisal.**

S. 11. (As amended by St. 1907, c. 155.) The judge of probate, upon the application of any interested party, including the auditor general and county treasurers, or upon his own motion, shall as often as and whenever occasion may require, appoint a competent person as appraiser to fix the clear market value at the time of the transfer thereof of property which shall be subject to the payment of any tax imposed by this act, a description of which property and the names and residences of the persons to whom it passes shall be given by the judge of probate to such appraiser. If the property, upon the transfer of which the tax is imposed, shall be an estate, income or interest for a term of years or for life, or determinable upon any future or contingent estate, or shall be a remainder or reversion or other expectancy, real or personal, the entire property or fund by which such estate, income or interest is supported, or of which it is a part, shall be appraised immediately after such transfer, or as soon thereafter as may be practicable, at the clear market value thereof as of that date: *Provided, however*, that when such estate, income or interest shall be of such a nature that its clear market value cannot be ascertained at such time, it shall be appraised in like manner at the time when such value first became ascertainable. The value of every future or contingent or limited estate, income, interest or annuity, dependent upon any life or lives in being, shall be determined by the rule, method or standard of mortality and value employed by the commissioner of insurance in ascertaining the value of policies of life insurance companies, except that the rate of interest for computing the present value of all future and contingent interests or estates shall be five per centum per annum. The commissioner of insurance shall, upon request of the auditor general, prepare such tables of values, expectancies and other matters as may be necessary for use in computing, under the provisions of this act, the value of life estates, annuities, reversions and remainders, which shall be printed and furnished by the auditor general to the several judges of probate upon request: *Provided further*, that the clear market value of the transfer of a money legacy, presently taxable, shall for the purposes of this act be taken to be the face value of the money at the date of death of decedent.

**Appraisers' Proceedings. — Compensation.**

S. 12. (As amended by St. 1903, c. 195.) Every such appraiser shall forthwith give notice by mail to all such persons as he is notified by the judge of

probate are interested in the property to be appraised, and to the county treasurer, of the time and place when he will appraise the property. He shall at such time and place appraise the same at its clear market value as herein prescribed, and for that purpose said appraiser is authorized to issue subpoenas to compel the attendance of witnesses before him, and to take the evidence of such witnesses under oath concerning such property and the value thereof, and he shall make report thereof and of such value in writing to said judge of probate, together with the depositions of the witnesses examined and such other facts in relation thereto and to the said matter as the said judge of probate may order and require. Every appraiser shall be reimbursed for his actual and necessary traveling and other expenses and shall be entitled to three dollars per day for every day actually and necessarily employed in such appraisal. The fees of the necessary witnesses shall be the same as those now paid to witnesses subpoenaed to attend a court of record. A statement in detail of such compensation and disbursements as are authorized by this section shall be approved by the judge of probate and paid by the county treasurer from the general or contingent fund of the county.

**Appraisal. — Report. — Appeal. — Rehearing.**

S. 13. (As amended by St. 1903, c. 195.) The report of the appraiser shall be filed in the office of the judge of probate, and from such report and other proof relating to any such estate before the judge of probate, the judge of probate shall forthwith, as of course, determine the clear market value of all such estates as of the date of transfer, and the amount of tax to which the same is liable, or the judge of probate may so determine the clear market value of all such estates and the amount of tax to which the same are liable without appointing an appraiser. The judge of probate may, and shall on application of the attorney general or auditor general, require the executor, administrator or trustee of any estate to file with him an itemized statement or, petition containing itemized statement, under oath, of the personal property and real property within his knowledge or possession or under his control as such executor, administrator or trustee, which statement shall indicate the date from which interest and dividends were due and unpaid upon each item of the personal estate, together with the rate of such interest and also of the amount and character of any incumbrances upon such real estate at the time of the death of said deceased, and other data, such as debts, expenses of administration and other charges which constitute proper deductions in reaching a taxable remainder under the provisions of this act. The judge of probate before determination of the tax upon the estate of decedent as a whole is made, may determine the tax upon any specific legacy or devise, or upon the real estate of a decedent, and may authorize and direct any executor or administrator to pay to the county treasurer a sum in gross on account of the inheritance tax due from the estate when by reason of claims made against the estate, litigation or other unavoidable cause of delay the tax cannot be determined by the court within eighteen months from its accrual; but the five per centum discount provided in section four of this act shall not be allowed upon this gross sum. The judge of probate in the order determining the tax upon such estate shall state the amount authorized to be paid in gross as above provided and the date of such order. The commissioner of insurance shall, on the application of any judge of probate, or the auditor general, determine the value of any such future or contingent estate, income or interest limited, con-

tingent, dependent, or determinable upon the life or lives of persons in being upon the facts contained in any such appraiser's report, or facts stated by the judge of probate, and certify the same to the auditor general or the judge of probate, and his certificate shall be *prima facie* evidence that the method of computation adopted therein is correct. In case the state shall appeal from the appraisement, assessment or determination of the tax, it shall not be necessary to give any bond. The judge of probate shall immediately give notice upon the determination by him of the value of any estate which is taxable under this act, and of the tax to which the same is liable, to each heir, legatee or devisee or his attorney and of the tax assessed upon his share of the estate, by mailing such notice, postage prepaid, to the last known address of each of such persons, or his attorney except those who were in court in person or by attorney at the time the tax was so determined: *Provided*, that the judge of probate shall, upon the written application of any person interested, including the attorney general, file with him within sixty days after the determination by him of any tax under this act, grant a rehearing upon the matter of determining such tax; and if, on such rehearing, he shall modify his former determination he shall enter an order redetermining the tax, and make the necessary entries in the book provided for in section seventeen of this act, and make report thereof to the auditor general and county treasurer, as provided in section eighteen of this act.

#### **Proceedings for Collection.**

S. 14. (As amended by St. 1903, c. 195.) If the auditor general or the treasurer of any county shall have reason to believe that any tax is due and unpaid under this act, after the refusal or neglect of the persons liable therefor to pay the same, he shall notify the attorney general in writing of such failure or neglect, and such attorney general may apply, or cause the prosecuting attorney of the county to apply, in behalf of the state, to the probate court for a citation citing the persons liable to pay such tax to appear before the court on a day specified not more than three months after the date of such citation, and show cause why the tax should not be paid. The judge of probate upon such application and whenever it shall appear to him that any such tax accruing under this act has not been paid as required by law, shall issue such citation, and the service of such citation, and the time, manner and proof thereof and the hearing and determination thereon, and the enforcement of the determination or order made by the judge of probate shall conform to the practice of the probate court in like cases made and provided for the service of citations out of the probate court, and the hearing and determination thereon and its enforcement, so far as the same may be applicable. In all cases where an estate has been declared closed without fixing or payment of the tax upon the transfers therein, and the attorney general shall believe such transfers to be subject to a tax and real estate in said estate to be subject to the lien thereof and shall contemplate the institution of proceedings for the fixing and enforcing, or the enforcing of the same when it has been fixed, he may in his discretion file with the register of deeds of the county a notice setting forth such fact, together with a description of the real estate claimed to be subject to the same, which shall operate with the same force and effect as a *lis pendens* under existing statutes: *Provided*, that the failure to file such notice shall not in any manner prejudice the rights of the state. The judge of probate or the probate clerk or register shall, upon the request of

the attorney general, prosecuting attorney, or treasurer of the county, furnish one or more transcripts of such decree which shall be docketed and filed by the county clerk of any county of the state without fees, in the same manner and with the same effect as provided by law for filing and docketing transcripts, judgments and decrees of circuit courts in this state. As a cumulative remedy for the collection of the tax, the state may proceed by an action of assumpsit in any court of competent jurisdiction. Whenever the probate judge shall issue a citation and take the proceedings specified in this section, he shall certify such fact to the county treasurer, together with an itemized bill of all expenses incurred for the services of such citation, and other lawful disbursements not otherwise paid, and thereupon the county treasurer shall pay the same from the general or contingent fund of the county. In all proceedings to which any county treasurer, or the auditor general, is cited to appear under sections eleven and twelve of this act and all proceedings arising or instituted hereunder, the attorney general shall represent the interests of the state therein, the compensation and expenses of necessary assistants and the expenses of the said attorney general to be paid after approval by the attorney general on the warrant of the auditor general out of the general fund in the state treasury.

#### **Receipts.**

S. 15. (As amended by St. 1903, c. 195.) Any person shall, upon the payment of the sum of fifty cents to the county treasurer, be entitled to a certified copy of the receipt issued by the county treasurer under section three of this act for the payment of any tax under this act, which receipt shall designate upon what real property, if any, such tax shall have been paid, by whom paid, and whether in full of such tax. Such receipts may be recorded in the office of the register of deeds of the county in which such property is situated, in a book to be kept by him for that purpose, which shall be labeled "Transfer Tax."

#### **Fees of County Treasurer.**

S. 16. (As amended by St. 1903, c. 195.) The treasurer of each county, except in counties where the treasurer is paid a salary in lieu of fees, shall be allowed on each and all taxes paid and accounted for by him under this act one per centum. Such fees shall be in addition to the fees or compensation now allowed by law to such officers, and shall be paid out of the general fund or contingent fund of the different counties.

#### **Records.**

S. 17. (As amended by St. 1903, c. 195.) The auditor general shall furnish to each judge of probate a book, which shall be a public record, in which he shall enter a formal order containing the name of every decedent upon whose estate letters of administration or letters testamentary or ancillary letters have issued, the date of death and place of residence at the time of death of such decedent, the names, places of residence and relationship to him of his heirs at law, in case he died intestate or left estate not disposed of by will, the names, places of residence and relationship to him of the legatees and devisees in the will of the decedent, in case he died testate, the ages of all life tenants and beneficiaries under life estates, the clear market value of his real



and personal property, the clear market value of the property, real and personal, passing to each heir, legatee and devisee, and the clear market value of annuities, life estates, terms of years, and other property of such decedent, or given by him in his will and otherwise, as fixed and determined by the judge of probate, and the amount of tax assessed thereon, and the amount of tax assessed on the share of each heir, legatee and devisee, when from the records of the court or the testimony given there appears to be property in such estate liable to tax under this act: *Provided*, the description of no real estate need be given except such as is taxable under this act, and a sufficiently definite description shall be given to fully identify such taxable real estate and the persons to whom the several parcels are devised. He shall also enter in said book the name, date of death, and place of residence at time of death of every decedent, grantor, vendor or donor who has made a transfer of property in contemplation of death or intended to take effect in possession or enjoyment at or after his death, subject to tax under this act; the name and residence of the grantee, vendee or donee and his relationship to the grantor, vendor or donor, the clear market value as determined by the judge of probate of the property so transferred by him and the tax determined by the court payable thereon. These entries shall be made from data contained in the papers filed in the probate court and testimony taken in any proceedings relating to the estate of the decedent. The judge of probate shall also enter in such book the amount of the real and personal property of such decedent as shown by the inventory thereof when made and filed in his office. In case the judge of probate shall determine the amount of tax to be paid upon any specific legacy or devise or upon the real estate of a decedent before the determination of the tax by him upon the estate as a whole, only such entries need be made in such book in that particular case as refer to such legacy or devise or real estate, but it shall be distinctly stated in said book that it is but a partial determination by the judge of probate of the tax due from the estate. Whenever the determination of the tax in such estate by the judge of probate is general or final, the deductions made by the judge of probate from the full value of the estate shall be particularly specified, so that the several reasons for the deductions made shall clearly appear upon the record; such record so required to be furnished by the auditor general shall be in the following form, and shall be of such size and so arranged as he shall determine will best meet the requirements of this act.

#### ABSTRACT OF TAXABLE INHERITANCES. VOL. NO.....

Page No.....

State of Michigan.

The probate court for the county of.....

At a session of said court held at....., in  
said county the.....day of.....  
A. D. 19. ....

Present, the Honorable.....  
Probate Judge.

In the matter of the inheritance tax upon transfers in the estate of.....  
....., deceased.

In this matter it being represented to me and appearing that the said deceased was, at the time of his death on the ..... day of .....  
 ..... a resident of ..... and possessed  
 property the transfer of which or some interest or estate therein is taxable under  
 the inheritance tax law (act 188 of the public acts of 1899 and .....  
 ..... of 1903); that ..... of .....  
 ..... was duly and regularly appointed .....  
 of the said estate and ..... , and that as appears  
 from the inventory on file in this court, the amount of property belonging to said  
 estate is stated to be as follows:—

Personal property, \$.....; real property, \$.....

It further appears and I hereby find that the debts of said deceased owing at  
 the time of his death (exclusive of interest accruing thereafter) amount to \$.....  
 .....; that the funeral expenses of said deceased amount to \$.....;  
 and that the expenses of administration of the estate of said decedent (exclusive  
 of all items of disbursement for repairs to buildings or other property belonging  
 to, or taxes accruing after death, upon the estate of said deceased, all allowances  
 for the support of widow and children of said deceased, expenses incurred in  
 contesting the will of said deceased, and other items of disbursement for the  
 benefit of the beneficiaries of said estate, not strictly expenses of administration)  
 amount to the sum of \$.....; the total debts and expenses of adminis-  
 tration being \$.....

After due and careful investigation, examination and consideration, I find  
 and determine that the clear market value of all of said decedent's personal  
 property and real estate, at the date of his death, was as follows:—

Personal property, \$.....; real property, \$.....; and that  
 after deduction therefrom of the total debts and expenses of administration  
 (debts secured upon realty being deducted from the value of the real estate, and  
 debts unsecured and secured on personalty being deducted from the value of  
 the personalty), there remains subject to taxation under the provisions of said  
 act before deducting statutory exemptions, transfers of personal property to  
 the amount of \$.....; and transfers of real property to the amount of  
 \$.....; and that of said transfers certain interests hereinafter set forth  
 in detail in the schedule hereto are not presently taxable by reason of the following  
 contingency, rendering it impossible to determine presently the value of the  
 interests passing and the amount of the tax thereon, namely, .....  
 .....

And I hereby find and determine that the tax upon the presently taxable  
 transfers in said estate amounts to the sum of \$..... and find that the  
 several names, residences, relationships and ages, where interest consists of life  
 estates or annuities, of the several beneficiaries, together with the character and  
 amount of the several interests or estates passing thereto, the rate of tax to which  
 each is subject, and the portion of the tax fixed upon, apportioned to, and required  
 to be borne by each of the several taxable transfers, is as set forth in detail in  
 the following schedule:—

[The schedule shall contain the following headings for the several columns and space for sufficient entries, remarks, etc.]

A	B	C	D	E
Name of Heir at Law, Legatee or Devisee to whom Estate Passes.	Residence.	Relationship.	Age of Life Tenant or Annuitant.	Rate of Tax. Per Cent.
F	G	H	I	J
Value of Legacy or Personal Estate Passing.	Value of Personal Estate Exempt.	Value of Legacy or Personal Estate Taxable.	Amount of Tax on Personal Estate.	Value of Real Estate Passing.
K	L	M	N	O
Value of Real Estate Exempt.	Value of Real Estate Taxable.	Amount of Tax on Real Estate.	Value of Annuities, Life Estates, etc., Passing.	Value of Annuities, Life Estates, etc., Exempt.
P	Q	R		
Value of Annuities, Life Estates, etc., Taxable.	Amount of Tax on Annuities, Life Estates, etc.	Total Amount of Tax.		

*Remarks:* — Including descriptions of real estate taxed and any explanations necessary to a complete understanding of the foregoing entries

.....  
Judge of Probate.

The form of which said order, exclusive of the schedule, shall be varied to meet the requirements of special cases, but none of the matter required thereby shall be omitted.

This form of record indicates that debts secured by mortgage are to be deducted from real property. This form was evidently copied from the New York statute, but can hardly be held in and of itself to establish a rule for fixing the amount of the inheritance tax where land of the testator is subject to mortgage. That is

done by other provisions of the statute which render the form inserted inapplicable. *In re Fox*, 159 Mich. 420, 124 N. W. 60, 16 Detroit Leg. N. 943.

#### **Reports.**

S. 18. (As amended by St. 1903, e. 195, and St. 1911, c. 73.) Each judge of probate shall, within three days after he shall have determined the tax and entered the order required in the preceding section, make a duly certified copy of such order upon forms furnished by the auditor general, containing all the data and matter required to be entered in such book, one of which shall be immediately delivered to the county treasurer, from which data the said county treasurer shall obtain the information for making the duplicate receipt required by this act, and the other transmitted to the auditor general. If in any calendar quarter beginning January, April, July or October first in each year, there has been no tax determined, the judge of probate shall make a report to the auditor general affirmatively showing this fact. The register of deeds of each county shall, upon blanks prescribed and furnished by the auditor general, as often as any deed or other conveyance is filed or recorded in his office of any property which appears to have been made in contemplation of death or intended to take effect in possession or enjoyment after the death of the grantor or vendor, make reports in duplicate containing a statement of the name and place of residence of such grantor or vendor, the name, relationship and place of residence of the grantee or vendee, and a description and the value of the property transferred and the consideration for the transfer as stated in the instrument filed or recorded, one of which duplicates shall be immediately delivered to the county treasurer, and the other transmitted to the auditor general.

Whenever any non-resident shall die leaving property, or any interest therein, in this state which has not been duly administered under the laws of this state and it shall be necessary to have the question of the taxation of the transfer thereof determined, such question may be presented and determined upon petition to be filed by the attorney general in any probate court of this state. The said petition shall set forth the name of the decedent; residence at time of death; the total amount of property constituting said estate; a description of and the value of all property in Michigan; and any and all such other data as may be necessary to inform the court of the facts in connection with such matter. It shall be the duty of the probate court with which such petition is filed to fix a date for hearing thereon and to give notice of such hearing in such manner as shall be prescribed. Publication of the notice of such hearing shall not be necessary unless ordered by the court. It shall be the duty of the executor, administrator, trustee or any interested party in said estate to furnish all such facts, data, information, reports and certified copies of proceedings had in connection with said estate in any other court, as shall be required by the attorney general or directed by the probate court. The probate court shall appoint a resident of Michigan to represent the said estate at such hearing and the person so appointed shall perform such duties as shall be required by the court. The person so appointed shall have and possess all of the powers of an executor or administrator for the purposes of this section, but shall not be personally liable for any inheritance tax in said estate and shall not be required to give any bond unless so directed by the court. The said probate court shall at the hearing

on said petition or at an adjourned hearing, determine whether the transfer of such property is taxable and if found taxable, he shall proceed as in all other cases to fix and determine the amount thereof. If it is found that the transfer of such property is not taxable, an order to that effect shall be entered in the said probate court. A re-determination of said order may be had and an appeal therefrom may be taken in the same manner provided for in this act. A certified copy of all such orders determining that there is no inheritance tax due and payable may be procured from the probate court upon the payment of fifty cents: *Provided*, That no order shall be entered in any such case until there is filed in said probate court receipts showing full payment of all expenses incurred including compensation due the person appointed to represent said estate, all of which expenses or compensation shall be paid by the executor, administrator, or any person interested in said estate: *Provided further*, That in case it may be necessary to have any such property subjected to regular probate proceedings in this state, or if any such estate shall have been administered in this state, the right to proceed under this section shall be discretionary with the probate court. This section shall not operate to relieve any such person as is referred to in section nine of this act from the liability therein expressed until sixty days after the date of entry of the order determining that there is no tax upon the transfers in said estate, or in case a tax is determined, until proper receipts showing payment thereof have been duly signed by the state treasurer and countersigned by the auditor general.

#### **Reports. — Examiners.**

S. 19. (As amended by St. 1909, c. 44.) Each county treasurer shall make a report under oath to the auditor general on January, April, July and October first of each year of all taxes received by him under this act during the preceding calendar quarter, stating for what estate and by whom and when paid. If in any calendar quarter the county treasurer has received no tax under this act, the report shall affirmatively show this fact. The form of such report shall be prescribed by the auditor general. If receipts issued by the county treasurer and money received thereon are not forwarded within the time specified in section three of this act, he shall pay interest at the rate of eight per cent per annum in addition to the amount of such delinquent taxes then in arrears. The auditor general may employ not to exceed two examiners whose duties shall be to make examinations of the records of the several probate courts, county treasurers and registers of deeds in this state, and report their findings to him and perform such other duties under the provisions of this act as the auditor general may direct, at a salary of not to exceed fifteen hundred dollars per annum, payable in the same manner as the salaries of other state officers are now paid. The expenses of said examiners shall be paid out of the general fund in the state treasury upon allowance by the state board of auditors after approval by the auditor general. [From here on is not in 1903.] There is hereby appropriated out of the general fund in the state treasury a sufficient amount of money to carry out the provisions of this section. The auditor general shall add to and incorporate in the state tax for the year nineteen hundred nine, and each year thereafter, a sufficient sum to reimburse the general fund in the state treasury for the amount herein appropriated.

**Application of Proceeds.**

S. 20. (St. 1899, c. 188.) All taxes levied and collected under this act shall be paid into the state treasury, and be applied in paying the interest upon the primary school, university and other educational funds, and the interest and principal of the state debt in the order herein recited, until the extinguishment of the state debt, other than the amounts due to educational funds, when such taxes shall be added to and constitute a part of the primary school interest fund, in pursuance of and in compliance with section one of article fourteen of the constitution of this state.

[See notes to the Act of 1899, *ante*, p. 613.]

**Definitions.**

S. 21. (As amended by St. 1907, c. 328.) The word "estate" and "property" as used in this act shall be taken to mean the property or interest therein of the testator, intestate, grantor, bargainor or vendor, passing or transferred to those not herein specifically exempted from the provisions of this act, and not as the property or interest therein passing or transferred to the individual legatees, devisees, heirs, next of kin, grantees, donees or vendees, and shall include all property or interest therein whether situated within or without this state [The rest of this sentence is not in 1903.] and including all property represented or evidenced by note, certificate, stock, land contract, mortgage or other kind or character of evidence thereof, and regardless of whether any such evidence of property is owned, kept or possessed within or without this state. The word "transfer" as used in this act shall be taken to include the passing of property or any interest therein in possession or enjoyment, present or future, by inheritance, descent, devise, bequest, grant, deed, bargain, sale or gift in the manner herein prescribed. The words "county treasurer," "prosecuting attorney," as used in this act shall be taken to mean the county treasurer or prosecuting attorney of the county having jurisdiction in section ten of this act.

[See notes to the Acts of 1899 and 1903, *ante*, pp. 613, 620.]

**PRACTICE.**

The following instructions were issued by the auditor general in 1907:—

**JUDGE OF PROBATE.**

In connection with volume three, "Record of Taxable Inheritances," the following suggestions and instructions should be observed by the judges in their work under Act 195, Public Acts of 1903, commonly called the inheritance tax law:

1. In estates where there are no taxable transfers, no orders should be made. Where there are any taxable transfers in an estate, a full report of every transaction, whether taxable or not, should be made.
2. A description of real estate that is not taxable need not be given, but a sufficiently definite description should be given to fully identify each parcel of taxable real estate and the persons to whom the several parcels are devised.

3. The duplicate orders to the county treasurer and auditor general must refer upon the upper right hand corner of the first page thereof to the volume and page of the book from which it was copied.

4. The orders should be sent to the county treasurer and auditor general respectively within three days, if possible, after the record upon the book is made, as the auditor general cannot countersign and seal the receipts until such orders are received.

5. When a delay in the payment of a tax of more than eighteen months from the date of death of decedent occurs, the record upon the book and the copies thereof, under the head of "Remarks" should show the cause of such delay if it is such as to entitle the executor or administrator to a reduction of the interest from eight per cent to six per cent.

6. No addition to the tax found to be due by the judge of probate on account of interest should be made by him, nor any deduction for payment within twelve months. Such additions and deductions should be left to the county treasurer.

### Legal and Administrative Questions.

#### *First.* Subjects of Taxation.

1. The transfer of all property of residents, without regard to its location, is taxable. The transfer of all property belonging to residents of this state, without regard to its location (except real estate situate without the state), is taxable, unless same is exempt. This includes credits secured by mortgages upon lands situate in other states, and stocks and bonds of foreign corporations.

2. The transfer of all property of non-residents situate within this state is taxable. This includes securities, stocks and bonds habitually kept or deposited within this state, money on deposit in banks in this state, and stocks of corporations of this state, whether within the state or not.

3. Credits belonging to non-residents, secured upon lands in this state are taxable.

4. Land contracts should be treated as personal property when given by decedent, as real property when held by decedent.

5. Tax titles held by decedent should be treated as personal property.

#### *Second.* Exemptions.

A. From the whole value of the estate of a decedent, the following exemptions or deductions are permissible: —

1. Bequests or legacies to persons, corporations and organizations specifically exempted. Religious, charitable and similar institutions and organizations of a domestic character are specifically exempted by statute. Foreign corporations are not so exempted.

2. The estate of a decedent under \$100 in value.

3. The transfer of real estate to persons of the relationship designated in section two of said act.

4. The transfer of personal property under the value of \$2,000 to the persons mentioned in said section 2.

5. Expenses of administration.

6. Debts of decedent.

7. Taxes accrued and which are a lien at the date of death.

8. Funeral expenses, except as hereafter noted.

9. Monument or tombstone where provided for by will or allowed by order of court.

10. Bequests or devises to executors or trustees for services as such to the amount of the fees or commissions allowed by law.

11. The exemptions provided for in sections 1 and 2 are allowed from each distributive share. For example, a legacy of seventy-five dollars to a niece would not be taxable, but a legacy of one hundred dollars or over to a niece would be taxable at five per cent. In the same way, a legacy to a son of one thousand five hundred dollars would not be taxable, but a legacy of two thousand dollars or over to a son would be taxable at one per cent for the full amount of the legacy.

B. The following will not be exempt or allowed to be deducted in arriving at taxable values:—

1. Under section 1, where the established value of each distributive share of the property of a decedent, either real or personal, or a combination of the two is one hundred dollars or more, and passes to persons or corporations not exempt by law from taxation, or to persons not exempt in section two, such transfer is taxable at five per cent.

2. Funeral expenses where the decedent is survived by her husband.

3. Taxes, interest or insurance accruing after the date of death of decedent.

4. Expenses of repairs or improvements to property after date of death.

5. Monuments or tombstones provided by heirs or legatees without direction in will or order of court.

6. A legacy or bequest to pay debts or satisfy obligations.

7. The state inheritance tax.

8. Expense of litigation between heirs, devisees or legatees

9. Loss or depreciation in value of property after date of death of decedent.

10. Devises or bequests to foreign institutions or corporations.

11. Devises or bequests to executors or trustees for services in excess of commissions or allowances provided for by law.

12. Disbursements made for benefit of beneficiaries other than expenses of administration.

13. Allowances for support of widow, or other beneficiary.

*Third. Appraisal and Assessment of Tax.*

1. The established value of the property of a decedent, for the purpose of taxation on the transfer thereof, is its actual true cash value at the date of death of decedent.

2. The appraisal can be made either by the judge of probate personally, or by an appraiser appointed by the court for that purpose. [See sections 11, 12 and 13, Act 195, Public Acts of 1903.]

3. When an appraiser is appointed, the report of the appraiser may be followed or disregarded by the judge of probate in his discretion in determining the value of an estate.

4. Whenever in the preliminary steps for the determination of the taxable transfer of an estate, the judge of probate has reason to believe that excessive charges for expenses are being made, or that a fraudulent or excessive claim has been allowed, he should, before the allowance of said charges and claims as a deduction in fixing the tax, notify the attorney or auditor general so that the state may be represented if it so elects.

5. In determining the amount of debts of deceased, care should be taken not to include any taxes paid by an executor or administrator unless the same were a lien on the land at the date of death of decedent.



6. Care should also be taken that no interest accruing after the death of decedent upon any of decedent's debts is included.

7. No disbursements of whatever character, made for the benefit of beneficiaries can be exempted as part of the debts of decedent.

8. Funeral expenses do not include traveling and similar expenses of friends and relatives in attending funeral, but do include burial and incidental expenses.

9. Executors and administrators cannot be discharged nor the estate or trust closed until receipts, sealed and countersigned by the auditor general showing payment of the tax, have been produced and filed.

10. When the tax is not heretofore fixed, the notice to heirs of hearing final account should include notice that the inheritance tax will also be determined upon that date.

11. All estates or interest in expectancy, and reversions or remainders, where the value of the same is determinable, are presently taxable unless election is made and bond filed under section seven of the inheritance tax law. Only in those cases where the value of the interest of any beneficiary is not presently determinable, or where bond is given, can interest of this character be left until the party beneficially entitled comes into possession thereof.

12. The judge of probate should require an inventory of every estate as required by section 9348, compiled laws of 1897.

13. Whenever the judge of probate is in doubt as to the proper method of determining the tax by reason of some peculiarity not anticipated in the preparation of these suggestions or instructions, it is recommended that he either send in a trial order for examination by the auditor general, or ask for the assistance of an inheritance tax examiner from the auditor general's department, who will be pleased to call and assist in computing the tax without expense to the estate or probate court.

14. Especial care should be taken by the judge of probate and the above suggestions thoroughly considered before the tax is determined in connection with any estate.

### COUNTY TREASURER.

#### Instructions as to Use of Blanks.

1. The duplicate statement and receipts in the book furnished county treasurers are numbered consecutively, and should be issued in chronological order. In the upper left-hand corner of the statement will be found a blank space for reference to the volume and number of the order of the judge of probate. This volume and number should always be given.

2. When any inheritance tax shall be paid to the county treasurer, he shall, in addition to duplicate receipts required to be issued, give the executor, administrator, trustee or other person paying the tax, a simple receipt for the amount received. [See section 3, Act 195, Public Acts of 1903.]

3. The county treasurer should not issue a receipt to an executor or administrator until the order of the judge of probate is on file with him.

4. The blanks in the form of duplicate statement and receipt should be filled in as indicated by parenthetical instructions contained thereon.

5. Whenever any portion of the tax upon a transfer is based upon real estate values, the description of such real estate as passes under the transfer to beneficiaries liable to an inheritance tax, should be included in the statement and

receipt issued by the county treasurer. Whenever there is not room upon the back of the receipt in the space left for the description, such portion as cannot be entered thereon should be placed upon paper similar in size and quality to that of the receipt and attached firmly to the receipt.

#### **Legal and Administrative Questions.**

1. No deduction from the tax as determined by the judge of probate should be made unless it is paid to the county treasurer within twelve months from the date of death of decedent, in which case a discount of five per cent should be allowed. Interest at the rate of eight per cent per annum from the date of death of decedent up to the time of payment of the tax should be added to the tax determined by the judge of probate, if it is not paid within eighteen months from the date of death of decedent. Whenever the order of the judge of probate indicates that there was necessary litigation or unavoidable delay, interest should be charged at the rate of six per cent per annum from and after the expiration of eighteen months from the date of death of decedent. [See section 4, Act 195, Public Acts of 1903.]

2. Receipts issued by the county treasurer and the money received thereon shall be forwarded to the auditor general immediately (within three days from the time of payment); otherwise he shall pay interest at the rate of eight per cent per annum on such sum or sums collected in addition to the amount received. [See sections 3 and 19, Act 195, Public Acts of 1903.]

3. The county treasurer, except in counties where the treasurer is paid a salary in lieu of fees, shall be allowed one per cent on all inheritance taxes collected and accounted for by him. Such fees shall be in addition to the fees or compensation now allowed by law to such officers and shall be paid out of the general or contingent fund of the different counties. [See section 16, Act 195, Public Acts of 1903.]

4. Each county treasurer shall make a report (on blank No. 2673) to the auditor general on January, April, July and October first of each year of all taxes received by him under this act during the preceding calendar quarter, stating for what estate and by whom and when paid. If, in any calendar quarter, the county treasurer has received no tax under this act, the report shall affirmatively show this fact. [See section 19, Act 195, Public Acts of 1903.]

5. Section 6, Act 195, Public Acts of 1903, provides for refunding taxes, when erroneously paid, under certain conditions. County treasurers should not refund under any circumstances, as the law provides that all refundings shall be made direct by the auditor general to the executor, administrator, trustee, person or persons entitled to receive the same.

6. The county treasurer cannot accept a deposit to cover a tax before the tax is determined by the judge of probate for the purpose of taking advantage of the five per cent discount nor for the purpose of avoiding the eight per cent penalty.

7. Especial care should be taken by the county treasurer and the suggestions contained in this pamphlet well considered before he issues his receipt for the tax.

## MINNESOTA.

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### List of Statutes.

- 1875. Statutes of Minnesota, c. 37.
- 1878. General Statutes, c. 7, s. 8.
- 1885. Statutes of Minnesota, c. 103.
- 1888. General Statutes Suppl., c. 7, s. 8.
- 1893. General Laws, c. 1.
- 1895. " " p. 3.
- 1897. Statutes, c. 293.
- 1901. " c. 255.
- 1902. " c. 3.
- 1905. " c. 168.
- 1905. " c. 288.
- 1909. Revised Statutes, ss. 1038-1 to 1038-24.
- 1911. Statutes, c. 209.
- 1911. " c. 372.

### In General.

Minnesota has had much difficulty in getting an inheritance tax that would satisfy the courts. Graduated probate fees similar to those in Wisconsin, first adopted in 1875 and extended in 1885, were held unconstitutional. The same fate successively befell the inheritance tax laws of 1897, 1901 and 1902. The act adopted in 1905 survived, but none too easily. A restrictive constitutional amendment adopted in 1894, which the legislature persisted in disregarding, was supplanted in 1906 by another amendment, which gives the legislature broad powers to impose inheritance taxes.

In response to the urgent suggestions of the state tax commission to differentiate between lineals and collaterals the legislature passed an amendment to this effect in 1909, but it was vetoed by the governor, as in his opinion it was unconstitutional. The recent legislation of 1911 has now, however, made the distinction between lineals and collaterals in a statute which also radically decreases exemptions and increases rates which now run as high as 15 per cent. This act bids fair to withstand attack, in view of the broad provisions of the constitutional amendment of 1906.

## Constitutional Limitations.

### Minnesota Constitution, a. 1.

S. 8. **Redress of injuries and wrongs.** Every person is entitled to a certain remedy in the laws for all injuries or wrongs which he may receive in his person, property or character; he ought to obtain justice freely and without purchase; completely and without denial; promptly and without delay, conformably to the laws.

### Minnesota Constitution, a. 6.

S. 7. **Probate Court.** There shall be established in each organized county in the state a probate court, which shall be a court of record, and be held at such times and places as may be prescribed by law. It shall be held by one judge, who shall be elected by the voters of the county for the term of two years. He shall be a resident of such county at the time of his election, and reside therein during his continuance in office, and his compensation shall be provided by law. He may appoint his own clerk, where none has been elected, but the legislature may authorize the election by the electors of any county, of one clerk or register of probate for such county, whose powers, duties, term of office and compensation shall be prescribed by law. A probate court shall have jurisdiction over the estates of deceased persons, and persons under guardianship, but no other jurisdiction, except as prescribed by this constitution.

Minn. Const. 1857, a. 9, s. 1, provided as follows:—

"All taxes to be raised in this state shall be as nearly equal as may be, and all property on which taxes are to be levied shall have a cash valuation, and be equalized and uniform throughout the state: provided that the legislature may, by general law or special act, authorize municipal corporations to levy assessments for local improvements. . . ."

This paragraph was amended in 1894 by a restrictive provision which has been supplanted by the amendment of 1906.

**Minn. St. 1905, c. 168.** Approved April 13, 1905.

Be it enacted by the Legislature of the State of Minnesota: The following amendment to article nine of the constitution of the state of Minnesota, to take the place of sections one, two, three, four and the amendment added to the end of said article adopted in 1896, relating to taxation, is hereby proposed to the people of the state of Minnesota for their approval or rejection, which amendment when adopted shall be known as section one of said article nine, that is to say:—

S. 1. The power of taxation shall never be surrendered, suspended or contracted away. Taxes shall be uniform upon the same class of subjects, and shall be levied and collected for public purposes, but public burying grounds, public schoolhouses, public hospitals, academies, colleges, universities and all seminaries of learning, all churches, church property, and houses of worship, institutions of purely public charity and public property used exclusively for any public purpose, shall be exempt from taxation, and there may be exempted from taxation personal property not exceeding in value \$200, for each household, individual

or head of a family, as the legislature may determine: Provided, that the legislature may authorize municipal corporations to levy and collect assessments for local improvements upon property benefited thereby without regard to a cash valuation, and, provided further, that nothing herein contained shall be construed to affect, modify or repeal any existing law providing for the taxation of the gross earnings of railroads.

[This amendment was adopted in 1906.]

[See further the constitutional amendment of 1894, *post*, p 645.]

### **Nature of Tax.**

An inheritance tax is not a tax upon property but upon the right of succession. *State v. Bazille*, 97 Minn. 11, 106 N. W. 93, 6 L. R. A. (N. S.) 732.

### **Statute to be Fairly Construed.**

The rule of strict construction ordinarily applied to the operation and effect of statutes on taxation and to proceedings thereunder does not apply to inheritance taxes. The statute must be given a fair and reasonable construction. *State v. Bazille*, 97 Minn. 11, 106 N. W. 93, 6 L. R. A. (N. S.) 732.

### **How to Test the Validity of the Statute.**

The constitutionality of the inheritance tax was brought to the attention of the court by an application by the treasurer for a writ of mandamus commanding the judge of probate to appoint appraisers to value certain legacies and devises for the purpose of determining the amount of the inheritance tax in *State v. Bazille*, 97 Minn. 11, 106 N. W. 93, 6 L. R. A. (N. S.) 732.

### **The Effect of an Unconstitutional Statute.**

Where an unconstitutional statute was nominally in force at the date of a certain transfer and after the transfer was made a valid law was passed, the transfer is subject to no tax whatever. The act was void from the beginning and its nominal existence in no way affected the validity of the transactions. Where the transfer was made while the unconstitutional statute was in force and later before the death of the transferor the legislature passed an act which was valid, the court says that it is possible that the parties may have had the possibilities of an inheritance tax in mind, but the law which the state was attempting to apply was not then in force and the case therefore does not present the question of the effect of a transfer of property with the intention and for the purpose of avoiding the operation of an existing inheritance tax law.

*State v. Probate Court, Washington County*, 102 Minn. 268, 286, 113 N. W. 888.

### **Avoiding Tax by Transfer to Corporation.**

The transferor organized a corporation and conveyed to it his property in return for the issue to him of most of its capital stock. His wife and children all signed agreements by which the transferor agreed to transfer to the wife and children certain shares of the stock on their agreement to lease the same stock to the transferor for life, and on the agreement that the wife would transfer the stock which she was to receive to the children, and who were to lease it to her for life on the same conditions. The court holds that the absolute ownership of the stock was not in the original transferor, but that the effect of these transactions was to give him a life estate with an interest in reversion in the wife and children. The court holds that a life estate in personal property although unknown at common law may now be created and that the original transferor reserved no power of disposition of property, and a will made after the transfers assuming to give the stock to other persons would have been of no effect and that therefore the stock did not pass by inheritance. The court was precluded by the stipulation under which the case came before it that there was no verbal or outside agreement not before the court from considering the question whether the agreement was made to avoid an inheritance tax. *State v. Probate Court, Washington County*, 102 Minn. 268, 294, 113 N. W. 888.

### **THE VOID STATUTE OF 1875.**

**Minn. St. 1875, c. 37.**

S. 4. For the purpose of reimbursing the county treasury for the salaries provided to be paid in this act to the judge of probate, it shall be the duty of each executor, administrator or guardian to pay or cause to be paid to the county treasurer for the use and benefit of the county in whose probate court proceedings are to be instituted to settle the estate of any deceased person, the following sums, according to the value of the estate and property of such deceased person, as shown by the inventory and appraisal, that is to say: ten dollars when such value shall exceed one thousand dollars and shall not exceed five thousand dollars; twenty dollars when the value of such estate shall exceed the sum of five thousand dollars and shall not exceed the sum of ten thousand dollars; thirty dollars when the value of the estate shall exceed the sum of ten thousand dollars and shall not exceed the sum of fifteen thousand dollars; fifty dollars when the value of the estate shall exceed fifteen thousand dollars and shall not exceed twenty thousand dollars, and seventy-five dollars in all cases where the value of the estate shall

exceed the sum of twenty thousand dollars, and in addition all sums necessarily expended in serving or publishing notices required by law: Provided, that in all cases where application is made for the appointment of any guardian for any minor or minors residing out of this state, but having property therein, or for the admission to probate of a will already probated in some other state, the person making such application shall pay in lieu of the sums above named the sum of ten dollars, and no other or different sum shall be required to be paid by any party seeking the aid of such probate court, except as provided above.

Minn. Gen. St. of 1878, c. 7, s. 8, is a copy of Minn. St. 1875, c. 37, s. 4.

Minn. St. 1885, c. 103, approved March 9, 1885, amends Minn. St. 1875, c. 37, s. 4, and Minn. Gen. St. 1878, c. 7, s. 8, to read as follows:—

S. 4. For the purpose of reimbursing the county treasury for the salaries provided to be paid in this act to the judge of probate, it shall be the duty of each executor, administrator, or guardian to pay or cause to be paid to the county treasurer for the use and benefit of the county in whose probate court proceedings are to be instituted to settle the estate of any deceased person, minor, spendthrift or insane person the following sums according to the value of the estate and property of such deceased person, minor, spendthrift, or insane persons, shown by the inventory and appraisal, that is to say ten (10) dollars when such value shall exceed two thousand (2,000) dollars and shall not exceed five thousand (5,000) dollars; twenty-five (25) dollars when such value shall exceed five thousand (5,000) dollars and not exceed ten thousand (10,000) dollars; thirty-five (35) dollars when such value exceeds ten thousand (10,000) dollars and does not exceed fifteen thousand (15,000) dollars; fifty (50) dollars when such value exceeds fifteen thousand (15,000) dollars and does not exceed twenty thousand (20,000) dollars; seventy-five (75) dollars when such value exceeds twenty thousand (20,000) dollars and does not exceed thirty-five thousand (35,000) dollars; one hundred (100) dollars when such value exceeds thirty-five thousand (35,000) dollars and does not exceed fifty thousand (50,000) dollars; two hundred (200) dollars when such value exceeds fifty thousand (50,000) dollars and does not exceed seventy-five thousand (75,000) dollars; three hundred (300) dollars when such value exceeds seventy-five thousand (75,000) dollars and does not exceed one hundred thousand (100,000) dollars; five hundred (500) when such value exceeds one hundred thousand (100,000) and does not exceed one hundred and fifty thousand (150,000) dollars; eight hundred (800) dollars when such value exceeds one hundred and fifty thousand (150,000) dollars and does not exceed two hundred thousand (200,000) dollars; one thousand (1,000) dollars when such value exceeds two hundred thousand (200,000) dollars and does not exceed five hundred thousand (500,000) dollars; five thousand (5,000) dollars when such value exceeds five hundred thousand (500,000) dollars and in addition such executor, administrator or guardian shall pay all sums necessarily expended in serving or publishing notices required by law. There shall be no discrimination made between resident and non-resident executors, administrators or guardians, or the estate of residents or non-residents of the state, no other or different sum shall be required to be paid by any party asking the aid of such probate court except as provided above.

The court holds that there is no question about the power of the legislature to require suitors to pay reasonable fees and costs, but it regards this inheritance tax as taxes in the ordinary sense of that word. The court finds that the arbitrary sums exacted and the fact that there is no probable correspondence between the sums to be paid and the character and extent of the service which may be required, show that this payment is an exaction as "taxes." If estates are taxable in this manner at all an exemption of estates not exceeding two thousand dollars is contrary to the requirement of the constitution. Therefore this statute is void as imposing a tax which is not equal.

The exaction of these arbitrary sums is further obnoxious to the Minnesota constitution providing that justice shall be obtained freely and without purchase. Suitors in this probate court of exclusive jurisdiction should not be required to pay as a condition to their suit being entertained a tax measured by the value of their property and without regard to the nature or extent of the judicial proceedings which may be invoked or become necessary. *State v. Gorman*, 40 Minn. 232, 41 N. W. 948, 2 L. R. A. 701.

The case just cited has been understood as an authority that the requirement of our constitution that all taxes to be raised in this state shall be as nearly equal as may be applied to excise and impost taxes, and therefore a statute laying an inheritance tax would be unconstitutional. "It is not quite clear whether this decision was based upon the proposition that the tax was one laid upon property or upon the privilege of having estates settled and distributed in the probate court. If the former—which was probably the case—the decision is not an authority for or against the right of the legislature to levy an inheritance tax under section 1, article 9, of the constitution. "If the word 'taxes,' as used in this section as it originally stood, includes excise and impost taxes, it by no means follows that a statute laying an inheritance tax, which aimed at practical equality, would not be valid." *Per Start, C. J., in Drew v. Tift*, 79 Minn. 175, 183, 81 N. W. 839, 47 L. R. A. 525, 79 Am. St. Rep. 446.

### **The Constitutional Amendment of 1894.**

**Minnesota Constitution 1893, First Amendment.** Adopted November 6, 1894.

And provided further, that there may be by law levied and collected a tax upon all inheritances, devises, bequests, legacies and gifts of every kind and description above a fixed and specified sum of any and all natural persons and



corporations. Such tax above such exempted sum may be uniform, or it may be graded or progressive, but shall not exceed a maximum tax of five per cent.

Minnesota was, so far as the court was advised, the only state whose constitution in express terms limited the power of the legislature in the laying of an inheritance tax. *Drew v. Tift*, 79 Minn. 175, 81 N. W. 839, 47 L. R. A. 525, 79 Am. St. Rep. 446. [See, however, Alabama, *ante*, p. 303.]

The clearly disclosed object of the amendment to the Minnesota constitution, 1894, was to authorize an inheritance tax law similar to those in force in other states of this country. The Minnesota constitution provides that the tax may be "uniform, graded or progressive." Authority to classify persons and property for the purpose of taxation is well settled and graded or progressive taxation is intimately associated with that of classification and perhaps amounts substantially to the same thing. *State v. Basille*, 97 Minn. 11, 106 N. W. 93, 6 L. R. A. (N. S.) 732.

The proviso in the Minn. Const., a. 9, s. 1, as to an inheritance tax was added in 1894, presumably to meet the difficulties the court found in the case of *State v. Gorman*, 40 Minn. 232, 41 N. W. 948, 2 L. R. A. 701. This amendment was incorporated into the existing constitution and the section in question must be construed precisely as if the proviso had been a part of the original section; hence the mandate of equality qualifies the provisions of the amendment and applies to the whole section. The court therefore holds that the requirement of equality in taxation applies to inheritance taxes exactly as it does to taxes on property except as expressly provided in the last clause of the section. *Drew v. Tift*, 79 Minn. 175, 81 N. W. 839, 47 L. R. A. 525, 79 Am. St. Rep. 446.

## THE VOID STATUTE OF 1897.

Minn. St. 1897, c. 293.

AN ACT FOR A TAX ON GIFTS, INHERITANCES, DEVISES, BEQUESTS AND LEGACIES IN CERTAIN CASES.

S. 1. A tax shall be and is hereby imposed upon the transfer of any personal property, of the value of five thousand (5,000) dollars or over, or of any interest therein or income therefrom, in trust or otherwise, to persons or corporations not exempt by law from taxation on real or personal property, in the following cases:—

*First:* When the transfer is by will or by the intestate laws of this state from any person dying seized or possessed of the property while a resident of the state.

*Second:* When the transfer is by will or intestate law, of property within the state, and the decedent was a non-resident of the state at the time of his death.

*Third:* When the transfer is of property made by a resident or by a non-resident, when such non-resident's property is within this state, by deed, grant, bargain, sale or gift, made in contemplation of the death of the grantor, vendor or donor, or intending to take effect, in possession or enjoyment, at or after such death. Such tax shall also be imposed when any such person or corporation becomes beneficially entitled, in possession or expectancy, to any property or the income thereof, by any such transfer, whether made before or after the passage of this act. Such tax shall be at the rate of five (5) per cent upon the clear market value of such property, except as otherwise prescribed in the next section.

### **Exemption of Realty Void.**

Under the Minn. Const., a. 9, s. 1, a statute laying an inheritance tax must include real property as well as personal, and there can be no discrimination in this respect; therefore, the act of 1897 is unconstitutional. *Drew v. Tift*, 79 Minn. 175, 81 N. W. 839, 47 L. R. A. 525, 79 Am. St. Rep. 446.

### **Exemption of Persons Exempt by General Law.**

The act is further unconstitutional as it excepts from its operation persons and corporations whose property is exempt by law from taxation under the provision of the Minn. Const., a. 9, s. 1. Such a statute must lay the tax upon all bequests, devises and gifts to any and all natural persons and corporations. *Drew v. Tift*, 79 Minn. 175, 81 N. W. 839, 47 L. R. A. 525, 79 Am. St. Rep. 446.

### **Tax should be only on Excess above Exemption.**

This act is void for inequality because it leaves the tax upon the entire devise, bequest or distributive share if of the specified value and not upon the excess above a fixed, specified, exempted sum as the amendment of 1894 to the Minnesota constitution requires. *Drew v. Tift*, 79 Minn. 175, 81 N. W. 839, 47 L. R. A. 525, 79 Am. St. Rep. 446.

### **Minn. St. 1897, c. 293.**

S. 2. When the property or any beneficial interest therein passes by any such transfer to or for the use of father, mother, husband, wife, child, brother, sister, wife or widow of a son, or the husband of a daughter, or any children adopted as such, in conformity with the laws of this state, of the decedent, grantor, donor or vendor, or to any person to whom any such decedent, grantor, donor or vendor for not less than ten (10) years prior to such transfer, stood in the mutually acknowledged relation of a parent, or to any lineal descendant of such decedent, grantor, donor or vendor, born in lawful wedlock, such transfer of property shall not be taxable under this act, unless it is personal property of the value

of ten thousand (10,000) dollars or more, in which case it shall be taxable under this act at the rate of one (1) per centum upon the clear market value of such property.

### **Classification by Relationship Upheld.**

This act is not unconstitutional for the reason that it taxes lineal heirs and distributees at 1 per cent and collateral heirs at 5 per cent. "There is a natural reason for taxing the privilege of the latter of receiving the property at a higher rate than that of the former" and the amendment of 1894 to the Minnesota constitution "authorizes such graduation of the tax." *Drew v. Tift*, 79 Minn. 175, 81 N. W. 839, 47 L. R. A. 525, 79 Am. St. Rep. 446. See to the same effect dictum in *State v. Basille*, 97 Minn. 11, 106 N. W. 93, 6 L. R. A. (N. S.) 732.

### **Distinction between Exemptions to Lineals and Collaterals.**

The amendment of 1894 to the Minnesota constitution provides that an inheritance tax may be laid on inheritances above a fixed and specified sum, and that such tax may be uniform or it may be graded or progressive. These are exceptions to the rule of equality in taxation and authorize the exemption of inheritances to the extent of a fixed and uniform sum. The exemption, however, must be uniform and apply equally to all persons and corporations, and therefore a larger exemption to lineals of ten thousand dollars than to collaterals of five thousand dollars makes the statute void. *Drew v. Tift*, 79 Minn. 175, 81 N. W. 839, 47 L. R. A. 525, 79 Am. St. Rep. 446.

Minn. St. 1897, c. 293, ss. 3 to 17, provide for the assessment and collection of the tax. Section 18 covers the definition of terms.

## **THE VOID STATUTE OF 1901.**

### **Minn. St. 1901, c. 255.**

S. 1. A tax shall be and is hereby imposed upon the transfer of any property real, personal or mixed, tangible or intangible, over which this state has jurisdiction; or of any interest therein, or income therefrom in trust or otherwise, when the value of such property, interest or income exceeds five thousand dollars (\$5,000), in the following cases: —

*First:* When the transfer is by will, or by the intestate laws of this state from any person dying, deceased or possessed of the property while a resident of this state.

*Second:* When the transfer is by will, or intestate law of property within the state and the decedent was a non-resident of the state at the time of his death.

*Third:* When the transfer is of property made by a resident or by a non-resident when such non-resident's property is within the state, by deed, grant, bargain, sale or gift made in contemplation of the death of the grantor, vendor

or donor, or intending to take effect in possession or enjoyment at or after such death.

Such tax is also imposed when any person or corporation becomes beneficially entitled in possession or expectancy to any property or the income thereof by any such transfer, whether made before or after the passage of this act.

Such tax shall be at the rate of five per cent of the clear market value of such property, interest or income, except as otherwise provided in the next section; provided, that any estate, property, interest or income so transferred, that shall be valued at five thousand dollars (\$5,000), or less, shall be exempt from and not subject to the tax hereby imposed.

S. 2. When such property interest or income, or any beneficial interest therein passes by any such transfer to the use of a father, mother, husband, wife, child, brother, sister, wife or widow of a son, or the husband of a daughter, or any child adopted as such, in conformity with the laws of this state, of the decedent, grantor, donor or vendor, or to any person to whom such decedent, grantor, donor or vendor, for not less than ten (10) years prior to such transfer, stood in the mutually acknowledged relation of parent, or to any lineal descendant of such decedent, grantor, donor or vendor, born in lawful wedlock, then such tax shall be at the rate of one per cent upon the clear market value of the property, interest or income so transferred, in excess of said sum of five thousand dollars (\$5,000).

### **Exemptions Void.**

This statute was in all probability intended to meet the requirements of *Drew v. Tift*, 79 Minn. 175, 81 N. W. 839, 47 L. R. A. 525, 79 Am. St. Rep. 446. The court, however, decides that the statute is still unconstitutional, as there is a flagrant want of uniformity and equality not only as between collateral and lineal descendants but also as between collaterals. The tax is imposed upon any transfer to collaterals which exceeds five thousand dollars, and not upon the excess over and above that amount but upon the whole value where it exceeds five thousand dollars, and the court holds that this is clearly unequal, as if the value of the transfer should be five thousand one hundred dollars the tax would be laid upon the whole amount, while the person receiving less than five thousand dollars would pay no tax at all. *State v. Bazille*, 87 Minn. 500, 92 N. W. 415, 94 Am. St. Rep. 718.

Section 18 provides that the words "estate" and "property" as used in the act shall be taken to mean the personal property of the testator. This section limits the effect of the statute to personal property and is therefore void, as decided in the case of *Drew v. Tift*, 79 Minn. 175, 81 N. W. 839, 47 L. R. A. 525, 79 Am. St. Rep. 446; *State v. Bazille*, 87 Minn. 500, 92 N. W. 415, 94 Am. St. Rep. 718.

Minn. St. 1901, c. 255, ss. 3 to 18, cover the appraisal of the property and the collection and payment of the tax.

## THE VOID STATUTE OF 1902.

**Minn. St. 1902, c. 3.** Approved March 12, 1902.

**S. 1. Subject to Tax.** A tax shall be and is hereby imposed upon all inheritances, devises, bequests, legacies and gifts of every kind and description, the value whereof exceeds ten thousand dollars, and upon such excess only.

**S. 2. Rates of Tax.** When such inheritance, devise, bequest, legacy or gift is for the use or benefit of a father, mother, husband, wife, child, brother, sister, grandchild, nephew or niece, wife or widow of a son, or the husband of a daughter or any child legally adopted, of the decedent or donor, or to any person to whom such decedent or donor for not less than ten years prior to the taking effect of such inheritance, devise, bequest, legacy or gift, stood in the mutually acknowledged relation of parent, or to any lineal descendant of such decedent or donor born in lawful wedlock, then such tax shall be at the rate of one-half of 1 per centum, and in all other cases at the rate of 10 per centum upon the full and true value of such inheritance, devise, bequest, legacy or gift, to be computed upon the valuation thereof in excess of \$10,000.

This act is void, as it provides for a tax of 10 per cent on collaterals and the Minn. Const., a. 9, s. 1, limits the tax to 5 per cent. *State v. Harvey*, 90 Minn. 180, 95 N. W. 764.

### Void in its Entirety.

Where the Minn. St. 1902, c. 3, is void, as the tax on collaterals is 10 per cent while the constitution only permits a tax of 5 per cent, it was urged that the tax as to lineal heirs is within the constitutional limitation and is separate and distinct from the tax as to the collateral heirs, and therefore the statute might be sustained as to lineals. The court replies to this claim that any such statute would be unconstitutional, as all must be taxed or none. Quoting *Drew v. Tift*, 79 Minn. 175, 81 N. W. 839, 47 L. R. A. 525, 79 Am. St. Rep. 446. *State v. Harvey*, 90 Minn. 180, 95 N. W. 764.

The claim was made that the greater includes the less and that a 10 per cent tax included a 5 per cent tax and that therefore the statute might be upheld as imposing a tax valid to the extent of 5 per cent. The court, however, finds that the rate of taxation and the whole thereof ordained by the legislature is absolutely void and the statute is in legal effect one in which the rate of taxation as to collateral heirs and other parties is left blank. Such being the case the court has no more power to fill by construction the blank in the statute by reading into it a rate of taxation which will be within the limitation of the constitution than it has to decree an inheritance tax in advance of any legislation on the subject. *State v. Harvey*, 90 Minn. 180, 95 N. W. 764.

[Ss. 3 to 22 cover the assessment and collection of the tax.]

## THE VALID STATUTE OF 1905.

**Minn. St. 1905, c. 288.** Approved and in effect April 19, 1905.

**AN ACT PROVIDING FOR TAXATION OF AND FIXING THE RATE OF TAXATION ON INHERITANCES, devises, bequests, legacies and gifts, and providing for the manner of payment as well as the manner of enforcing payment thereof.**

### **Transfers Taxable. — Exemptions.**

S. 1. A tax shall be and is hereby imposed upon all inheritances, devises, bequests, legacies and gifts of every kind and description, of any and all persons and corporations, the value of which exceeds ten thousand dollars (\$10,000), and upon such excess only.

### **Not Retroactive.**

This act has no application to property which was actually sold and disposed of before the date of its enactment. *State v. Probate Court, Washington County*, 102 Minn. 268, 285, 113 N. W. 888.

### **All Gifts to each Individual should be Consolidated in Reckoning Exemptions.**

Where a will provides for the creation of a trust estate and the payment of the principal to him in instalments as he reaches certain designated ages, there is but one legacy to him and but one exemption of ten thousand dollars under the Minn. St. 1905. Where the exemption of ten thousand dollars has already been deducted from the first instalment of the residue of the estate, which has already been paid to him, there can be no further exemption as to him. *State v. Probate Court*, 100 Minn. 192, 197, 110 N. W. 865. See further, notes to section 2, *post*.

### **Rates.**

S. 2. Such tax shall be computed upon the full and true value of such inheritance, devise, bequest, legacy or gift, above such excess, at the following rates, viz.: —

1. When such valuation is over ten thousand dollars (\$10,000) and less than fifty thousand dollars (\$50,000), the rate shall be one and one-half (1½) per cent thereof.

2. When such valuation is fifty thousand dollars (\$50,000) or over and less than one hundred thousand dollars (\$100,000), the rate shall be three (3) per cent thereof.

3. When such valuation is one hundred thousand dollars (\$100,000) or over, the rate shall be five (5) per cent thereof.

**Construction of Rates and Exemptions.**

The use of the word "excess" in section 2 is an inadvertence; the intention of the legislature was to tax everything above ten thousand dollars and the word "exemption" was the undoubted intention of the legislature and might be supplied; properly construed the section lays a tax upon all inheritances in excess of an exemption of ten thousand dollars. The court further finds that this section did not intend to give an exemption of twenty thousand dollars to persons coming within the first class receiving less than ten thousand dollars. The statute did not mean that unless the inheritance exceeds the sum of ten thousand dollars over and above the previously fixed exemption of ten thousand dollars no tax is imposed at all, while those of the class who receive over ten thousand dollars and less than fifty thousand dollars are taxed at the rate there prescribed on the whole amount. The court holds that this is not the intention of the statute but that the manifest intention was to lay the tax upon all inheritances between the values of ten thousand dollars and fifty thousand dollars. *State v. Bazille*, 97 Minn. 11, 106 N. W. 93, 6 L. R. A. (N. S.) 732.

*State v. Vance*, 97 Minn. 532, 106 N. W. 98, follows in all respects *State v. Bazille*, 97 Minn. 11, 106 N. W. 93, 6 L. R. A. (N. S.) 732.

Sections 2 of this statute contains two verbal errors. In section 2 the use of the word "excess" instead of the word "exemption" is a mistake in the first paragraph. Section 2 contains a mistake in inserting the words "over ten thousand dollars," in subdivision 1, section 2. The court thinks the use of these words was evidently an abortive attempt to make it clearer that ten thousand dollars of an inheritance should be exempt from tax, but it is plainly repugnant to the first paragraph of section 2 which provides that the tax shall be computed *on the value of the inheritance above the exemption*. Subdivision 1 must be construed, therefore, as if the words "over ten thousand dollars" had been omitted. So construing the statute the court finds that an inheritance tax must be computed in all cases upon the true value of the inheritance above an exemption of ten thousand dollars; but when such valuation is less than fifty thousand dollars the tax rate is one and one-half per cent thereof; but when such valuation is fifty thousand dollars or over and less than one hundred thousand dollars the rate is 3 per cent; that when such valuation is one hundred thousand dollars or over the rate is 5 per cent; and that a tax on a legacy of the total value of fifty-eight thousand

dollars should be at the rate of one and one-half per cent. It is clear from *State v. Bazille*, 97 Minn. 11, 106 N. W. 93, 6 L. R. A. (N. S.) 732, that it was the intention to hold in that case that a tax was laid upon all inheritances less than fifty thousand dollars in value above the exemption at the rate of only one and one-half per cent. *State v. Probate Court*, 111 Minn. 297, 126 N. W. 1070.

### **Progressive Feature Upheld. — Equality.**

"The authority to make the tax graded or progressive was incorporated in the law advisedly, and in view of the well-known and firmly established system of such taxation in force in this country, based upon the wise and wholesome doctrine that ability to pay is the true basis for all taxation. Though it results in a measure in inequality, it conforms to a system sanctioned and supported by the authorities generally, and is not repugnant to constitutional principles. Three distinct classes are created by the statute, and there is absolute equality between the members of each. The same exemption is allowed to those of all classes, and the same rate of taxation is imposed upon members coming within the several classes." *Per* Brown, J., in *State v. Bazille*, 97 Minn. 11, 22, 106 N. W. 93, 6 L. R. A. (N. S.) 732.

"It is insisted that the proviso authorizing the inheritance tax must be construed in connection with the equality mandate, and that, properly construed, the tax, although it may be graded or progressive, must, as respects graded or progressive features, be made as nearly equal as may be, and that the statute does not conform to this requirement. Counsel contend that this construction is sustained by the *Drew* case. In this we do not concur.

"The history of taxation is, in harmony with all human affairs, one of evolution. Its progress from the earliest times to the present day is one of constant development, in keeping with the advancing intelligence of man, unrolling step by step, with changing economic and social conditions, tardily, however, new methods and means of subjecting untaxed property to the tax rolls. Originally public revenue was raised by voluntary contributions from the citizens; later, in response to appeals and solicitations of the rulers; and finally, when voluntary contributions ceased, as at the present day, by compulsory assessments enforced by the operation of law. With this latter method came the demand, born of injustice and oppression, for uniformity and equality, and provisions securing it have long been a part of the fundamental law of all democratic



forms of government. Formerly tangible property only was taxed. Franchises of corporations, special privileges, and other intangible, yet valuable, property rights, never reached the tax lists. But in more recent times new species of property, 'new in kind, unsubstantial in character, vast in extent, enormous in value,' have, owing to industrial growth and commercial enterprise, come rapidly into existence (Jaggard, J., in *State v. Western Union Tel. Co.*, 96 Minn. 22, 104 N. W. 567), and methods and means of reaching and subjecting the same to its share of the public burdens have developed and been put into practical operation by the legislatures and courts of this country. Ability or faculty to pay has come to be the test in determining the justness of taxation. It is not only the basis of taxation but the goal toward which society is steadily working. It lies instinctively and unconsciously at the bottom of all of our endeavors at reform." Seligman, Tax. 72.

"The equity and fairness of this theory, in its broadest sense, when we reflect upon the vast fortunes accumulated as the result of especially advantageous opportunities and facilities not possessed by people in general, is apparent and obvious. It works no injustice or harm to those thus fortunately situated, does not injuriously affect productive or industrial agencies, and relieves in a measure those with lesser opportunities, and those to whom taxation is always an extreme burden. This theory does not, however, harmonize well with a strict application of the fundamental mandate of equality, as applied more particularly to the proportional system of taxation in force in this and other states. We mean by "proportional system" a tax at a fixed and uniform rate, in proportion to the amount of taxable property, based upon a cash valuation; and legislatures and courts have been not a little embarrassed in attempts to apply it.

"But an examination of the books discloses that the equality mandate has been expanded and made to yield, from time to time, to new and advancing social and economic conditions. The general principle is retained, but is applied with less rigor and strictness. In our own state it has been enlarged, extended, and departed from by the people. As it originally stood, our constitution in this respect prevented the assessment of property for local improvements, and it was amended by expressly excepting such assessments from the equality rule. *Bidwell v. Coleman*, 11 Minn. 45 (78); *Sperry v. Flygare*, 80 Minn. 325, 83 N. W. 177, 49 L. R. A. 757, 81 Am. St. Rep. 261. The equality mandate applies as a general rule to taxes

upon property only, and is generally held by the courts of this country to have no application to inheritance taxation, because a tax of that nature is not one upon property but upon the right of succession or inheritance (27 Am. & Eng. Enc. (2d ed.) 338), though in this state it was held to apply to inheritance taxes in *Drew v. Tift*, *supra*, and also to a similar statute in *State v. Gorman*, 40 Minn. 232, 234, 41 N. W. 948, 2 L. R. A. 701, precisely as in other taxation, except as otherwise provided by the amendment under consideration." *Per* Brown, J., in *State v. Bazille*, 97 Minn. 11, 16, 106 N. W. 93, 6 L. R. A. (N. S.) 732.

### **Validity Settled.**

The validity of Minn. St. 1905, c. 288, has been fully established by previous decisions of this court. *State v. Probate Court*, 112 Minn. 279, 128 N. W. 18, 19.

### **Rate of Tax on Income.**

Where payments of income are provided for by will the rate of taxation will not be increased from 1½ per cent to 3 per cent under the Minn. St. 1905, c. 288, until the value of the right acquired by the life tenant exceeds exclusive of the statutory exemptions fifty thousand dollars, and in like manner the rate cannot be increased to 5 per cent until such value exclusive of the exemption exceeds one hundred thousand dollars. *State v. Probate Court*, 112 Minn. 279, 128 N. W. 18, 22.

### **When Tax Accrues.**

S. 3. All taxes imposed by this act shall take effect at and upon the death of the decedent or donor and shall be due and payable at the expiration of one (1) year from such death, except as otherwise provided in this act; provided, however, that taxes upon any devise, bequest, legacy or gift limited, conditioned, dependent or determinable upon the happening of any contingency or future event by reason of which the full and true value thereof cannot be ascertained at or before the time when the taxes become due and payable as aforesaid, shall accrue and become due and payable when the person or corporation beneficially entitled thereto shall come into actual possession or enjoyment thereof.

[See notes under section 15.]

### **Deduction of Tax.**

S. 9. If any bequest or legacy shall be charged upon or payable out of any property, the heir or devisee shall deduct such tax therefrom and pay such tax to the administrator, executor or trustee, and the tax shall remain a lien or charge on such property until paid; and the payment thereof shall be enforced by the executor, administrator or trustee in the same manner that payment of the bequest or legacy might be enforced, or by the county attorney under section 20 of this act. If any bequest or legacy shall be given in money to any person for a limited period, the administrator, executor or trustee shall retain

the tax upon the whole amount; but if it be not in money, he shall make application to the court having jurisdiction of an accounting by him to make an apportionment, if the case requires, of the sum to be paid into his hands by such legatee or beneficiary, and for such further order relative thereto, as the case may require.

### **Tax Deducted on Payment.**

Where there is a remainder in the hands of the trustees it should be distributed to the several legatees mentioned in the will only after deducting the tax due on such of them as may exceed in value ten thousand dollars. *State v. Probate Court*, 100 Minn. 192, 198, 110 N. W. 865.

### **Time of Appraisal.**

S. 15. Every inheritance, devise, bequest, legacy or gift upon which a tax is imposed under this act shall be appraised at its full and true value immediately upon the death of decedent, or as soon thereafter as may be practicable: Provided, however, that when such devise, bequest, legacy or gift shall be of such a nature that its full and true value cannot be ascertained at such time, it shall be appraised in like manner at the time such value first becomes ascertainable.

### **Tax on Remainders Accrues at Death of Testator.**

*State v. Probate Court*, 100 Minn. 192, as to the imposition of an inheritance tax on legatees or devisees at the time of the death of the testator where the possession is postponed, is quoted with approval in *State v. Probate Court*, 101 Minn. 485, 112 N. W. 878.

### **The Court is to Assess only Present Tax.**

The court holds that the probate court had no jurisdiction to provide for the future payment of taxes or to determine when or under what circumstances the rate of taxation would increase. The question before the court is what tax has accrued and the court should limit itself to that question. *State v. Probate Court*, 112 Minn. 279, 128 N. W. 18, 21.

### **When Tax on Income Accrues.**

The court affirms *State v. Probate Court*, 100 Minn. 192, 110 N. W. 865, to the effect that the taxation of a right to income cannot be made until the income is paid. When the testator gives the beneficial use of his property for a limited time to one person after which the corpus of the estate goes to another, it would not be claimed that the right of each legatee is not subject to taxation. The fact that both bequests are to the same individual should not change the result. To hold otherwise would defeat the entire purpose

of the statute, which can only be given effect by insisting that when the amount actually paid exceeds the exemption a tax based on that amount is then due. *State v. Probate Court*, 112 Minn. 279, 128 N. W. 18, 20.

### **When Tax Accrues on Gift Conditional on Reaching Certain Age.**

The will provided that if a certain grandson E. B. survived the testator his estate should go to trustees for the grandson, the principal to be paid the grandson in instalments if he should reach various ages; and if he failed to reach the age designated the trustees should pay the balance in their hands to certain persons and charitable institutions designated in the will. The testator died May 25, 1905, and the case was governed by Minn. St. 1905, c. 288, ss. 1, 3, 4, 6 and 15. The court finds, construing these statutes, that they provide a tax to be paid within one year after the death of the decedent except as otherwise provided, and further, that under the express provisions and provisos to sections 3 and 15 a tax upon any gift which is limited, conditional, depending or determinable upon the happening of any contingency or future event, so that the true value cannot be presently ascertained, accrues and becomes payable only when the beneficiary is entitled to the possession or enjoyment thereof. Therefore under this will the probate court erred in imposing a tax upon the transfer of the property to the trustees, as they took no beneficial interest in the property. The transfer to them was simply a transfer to hold until the beneficiaries could be determined, which could only be done by the happening of an uncertain future event. Whether the grandson would ever be entitled to the property depends upon the contingency of his surviving to reach a certain age. The attorney general contended that the right to receive the net income from the property so long as the grandson lived is a life estate in the property, vesting in him at the time of the testator's death. But the court finds that the payment of income is limited in any event to a given number of years, hence, the legacy has none of the elements of a life estate, and the present value of the right to receive the income for a limited number of years cannot be ascertained for the value depends upon the contingency of his living until the limitation expires.

It follows, therefore, that a tax on the income will accrue and become payable as the time arrives for the payment to the beneficiary, and that it is the duty of the trustee to deduct the tax from the amount of any instalment of income to which he becomes

entitled and pay the amount thereof to the proper officer. *State v. Probate Court*, 100 Minn. 192, 196, 197, 110 N. W. 865.

### **Conditional Interests.**

The testator who died in 1908 left property in trust to be paid the widow during her life, and while she remained unmarried the net income from the estate, while if she married she was to receive only one-fourth of the estate while the residue of the estate was bequeathed to the testator's two sons, and the court holds that the tax on this legacy is due and payable when the beneficiary goes into possession. *State v. Probate Court*, 112 Minn. 279, 128 N. W. 18, 20.

It was claimed that it was impossible to ascertain the value of an estate given to one until she marries when she was to have a different interest, as no one could say how long she would remain unmarried. The court, however, observes that when a particular individual claims an exemption from burdens which the law imposes upon all alike and bases his claim upon provisions of the statute which refer exclusively to the methods to be employed, it is the duty of the court to construe these provisions so as if possible to give effect to the statutory intent. Therefore when the valuation takes place it is to be made as of the date of the testator's death. The court avoids the difficulty by deciding that the probate court should determine what is the value of each instalment as it is actually paid to the beneficiary. From the value of the first payments should be deducted the exemption of ten thousand dollars and the tax computed upon the remainder. This avoids a possible result that the custodians of the estate would be at liberty to transfer it to the beneficiaries in instalments and in the meanwhile be unable to collect any tax whatever. *State v. Probate Court*, 112 Minn. 279, 128 N. W. 18, 20. The court relies somewhat on *In re Millward*, 6 Misc. (N. Y.) 425, 27 N. Y. Suppl. 286.

### **Valuation.**

S. 17. The report of the appraisers shall be filed with the probate court, and from such report and other proof relating to any such estate before the probate court the court shall forthwith, as of course, determine the true and full value of all such estate and the amount of tax to which the same are liable; or the probate court may so determine the full and true value of all such estates and the amount of tax to which the same are liable without appointing appraisers.

### **Omission of Means for Valuation of Life Estates is not Fatal.**

The fact that the Minn. St. 1895, c. 288, does not provide any method for ascertaining the value of the life estate is not material;

for the court may in the absence of express direction adopt some practical way for ascertaining the value of the life estate — for example, by referring to life and annuity tables. *State v. Probate Court*, 100 Minn. 192, 197, 110 N. W. 865.

### **Jurisdiction of Probate Court.**

Minn. Const., a. 6, s. 7, limits the probate courts to jurisdiction over estates of deceased persons and persons under guardianship, and it was argued that the provisions of Minn. St. 1905, c. 288, as to the levying of assessments and collection of taxes was void. But the court holds that the jurisdiction given to the probate courts under the constitution includes every matter necessarily connected with the administration of the estate. The ascertainment of the amount of the inheritance tax is a judicial question, and being a necessary proceeding in the administration of the estate of deceased persons may be properly committed to the probate court. *State v. Probate Court*, 112 Minn. 279, 128 N. W. 18, 21.

### **Expenses of Administration Deducted.**

The expenses of the administration of the estate of a deceased person are proper to be deducted in ascertaining the value of the estate for the purposes of taxation under the inheritance tax law. *State v. Probate Court*, 101 Minn. 485, 487, 112 N. W. 878.

### **Trustee's Fees not Deducted.**

The will provides compensation for the trustee of five thousand dollars a year for ten years, or fifty thousand dollars; and the court holds that the compensation of the trustee, earned not in the administration of the estate but in the management thereof for the benefit of the legatees or devisees, does not come properly within the class or reason for exempting the administration expenses. Such services have no reference to closing the estate for the purpose of distribution to those entitled to it and are not required or essential to the rights of the heirs or legatees. Continuing trusts created for the benefit of those to whom the property ultimately passes are of voluntary creation and are intended for the preservation of the estate. The court relies somewhat on *In re Gihon*, 169 N. Y. 443, 62 N. E. 561, and *In re Silliman*, 79 N. Y. App. Div. 98, 80 N. Y. Suppl. 336; *State v. Probate Court*, 101 Minn. 485, 487, 112 N. W. 878.

[Sections omitted have not been construed and provided for the assessment and collection of the tax.]

## THE LEGISLATION OF 1911.

Minn. St. 1911, c. 209, amended the existing law and was approved April 18, 1911. Minn. St. 1911, c. 372, was approved April 20, 1911, and went into effect July 1, 1911. It radically altered sections 1 and 2 of the existing law and provided further as follows:—

S. 3. This act shall take effect and be in force from and after July 1, 1911 provided, however, that the provisions of this act shall apply only to legacies, inheritances, devises and transfers received from persons who shall die subsequent to the passage of this act; all gifts, legacies, inheritances and devises heretofore or hereafter received from any person who shall have died prior to the passage of this amendatory act shall be taxed and shall be subject to the provisions of sections 1 and 2 of chapter 288, Laws 1905, to the same extent and in the same manner as though this amendatory act had not been passed.

## THE PRESENT ACT.

St. 1911, c. 209.

### Taxable Transfers.

S. 1. A tax shall be and is hereby imposed upon any transfer of property, real, personal or mixed, or any interest therein, or income therefrom in trust or otherwise, to any person, association or corporation, except county, town or municipal corporation within the state, for strictly county, town or municipal purposes, in the following cases:—

(1) When the transfer is by will or by the intestate laws of this state from any person dying possessed of the property while a resident of the state.

(2) When a transfer is by will or intestate law, of property within the state or within its jurisdiction and the decedent was a non-resident of the state at the time of his death.

(3) When the transfer is of property made by a resident or by a non-resident when such non-resident's property is within this state, or within its jurisdiction, by deed, grant, bargain, sale or gift, made in contemplation of the death of the grantor, vendor or donor, or intended to take effect in possession or enjoyment at or after such death.

(4) Such tax shall be imposed when any such person or corporation become beneficially entitled, in possession or expectancy to any property or the income thereof, by any such transfer whether made before or after the passage of this act.

(5) Whenever any person or corporation shall exercise a power of appointment derived from any disposition of property made either before or after the passage of this act, such appointment when made shall be deemed a transfer taxable under the provisions of this act in the same manner as though the property to which such appointment relates belonged absolutely to the donee of such power and had been bequeathed or devised by such donee by will; and whenever any person or corporation possessing such a power of appointment so derived shall omit or fail to exercise the same within the time provided therefor, in whole or in part a transfer taxable under the provisions of this act shall be deemed to take place to the extent of such omission or failure, in the same manner as though the persons or corporations thereby becoming entitled to the possession or enjoyment of the property to which such power related had succeeded thereto

by a will of the donee of the power failing to exercise such power, taking effect at the time of such omission or failure. (St. 1911, c. 372.)

[See notes to the Act of 1905, *ante*, p. 651.]

#### **Rates and Exemptions.**

S. 2. The tax so imposed shall be computed upon the true and full value in money of such property at the rates hereinafter prescribed and only upon the excess of the exemptions hereinafter granted.

S. 2a. When the property or any beneficial interest therein passes by any such transfer where the amount of the property shall exceed in value the exemption hereinafter specified and shall not exceed in value fifteen thousand dollars the tax hereby imposed shall be:—

(1) Where the person entitled to any beneficial interest in such property shall be the wife, or lineal issue, at the rate of one per centum of the clear value of such interest in such property.

(2) Where the person or persons entitled to any beneficial interest in such property shall be the husband, lineal ancestor of the decedent or any child adopted as such in conformity with the laws of this state, or any child to whom such decedent for not less than ten years prior to such transfer stood in the mutually acknowledged relation of a parent; provided, however, such relationship began at or before the child's fifteenth birthday, and was continuous for said ten years thereafter, or any lineal issue of such adopted or mutually acknowledged child, at the rate of one and one-half per centum of the clear value of such interest in such property.

(3) Where the person or persons entitled to any beneficial interest in such property shall be the brother or sister or a descendant of a brother or sister of the decedent, a wife or widow of a son, or the husband of a daughter of the decedent, at the rate of three per centum of the clear value of such interest in such property.

(4) Where the person or persons entitled to any beneficial interest in such property shall be the brother or sister of the father or mother or a descendant of a brother or sister of the father or mother of the decedent, at the rate of four per centum of the clear value of such interest in such property.

(5) Where the person or persons entitled to any beneficial interest in such property shall be in any other degree of collateral consanguinity than is hereinbefore stated, or shall be a stranger in blood to the decedent, or shall be a body politic or corporate, at the rate of five per centum of the clear value of such interest in such property.

S. 2b. The foregoing rates in section 2a are for convenience termed the primary rates.

When the amount of the clear value of such property or interest exceed fifteen thousand dollars, the rates of tax upon such excess shall be as follows:—

(1) Upon all in excess of fifteen thousand dollars and up to thirty thousand dollars, one and one-half times the primary rates.

(2) Upon all in excess of thirty thousand dollars, and up to fifty thousand dollars, two times the primary rates.

(3) Upon all in excess of fifty thousand dollars and up to one hundred thousand dollars, two and one-half times the primary rates.

(4) Upon all in excess of one hundred thousand dollars, three times the primary



S. 2c. The following exemptions from the tax are hereby allowed:—

(1) All property transferred to municipal corporations within the state for strictly county, town or municipal purposes, shall be exempt.

(2) Property of the clear value of ten thousand dollars transferred to the widow of the decedent or husband of the decedent, each of the lineal issue of the decedent, or any child adopted as such in conformity with the laws of this state, or any child to whom the decedent for not less than ten (10) years prior to such transfer, stood in the mutually acknowledged relation of a parent; provided, however, such relationship began at or before the child's fifteenth birthday, and was continuous for said ten years thereafter, or any lineal issue of such adopted or mutually acknowledged child, shall be exempt.

(3) Property of the clear value of three thousand dollars transferred to each of the lineal ancestors of the decedent shall be exempt.

(4) Property of the clear value of one thousand dollars transferred to each of the persons described in the third subdivision of section two a (2a) shall be exempt.

(5) Property of the clear value of two hundred and fifty dollars transferred to each of the persons described in the fourth subdivision of section two a (2a) shall be exempt.

(6) Property of the clear value of one hundred dollars transferred to each of the persons and corporations described in the fifth subdivision of section two a (2a) shall be exempt; provided, however, that property of the clear value of two thousand five hundred dollars transferred to a public hospital, academy, college, university, seminary of learning, church or institution of purely public charity within this state, shall be exempt. (St. 1911, c. 372.)

[See notes to the Act of 1905, *ante*, p. 651.]

A dictum in *State v. Bazille*, 97 Minn. 11, 106 N. W. 93, upholds the power of the legislature to make a distinction between collateral and lineal descendants. See, also, language used in *Drew v. Tift*, 79 Minn. 175; 81 N. W. 839; 47 L. R. A. 525; 79 Am. St. Rep. 446.

#### **When Tax Accrues. — Valuation.**

S. 3. All taxes imposed by this act shall take effect at and upon the death of the person from whom the transfer is made and shall be due and payable at the expiration of one year from such death, except as otherwise provided in this act.

The value of every future or limited estate, income, interest or annuity dependent upon any life or lives in being, shall be determined by the rule, method and standard of mortality and value employed by the commissioner of insurance in ascertaining the value of policies of life insurance and annuities for the determination of liabilities of life insurance companies, except that the rate of interest for making such computations shall be five per centum per annum.

When any transfer is made in trust for any person or persons, or corporation or corporations, and the right of the beneficiaries of said trust to receive the property embraced in said trust is susceptible of present valuation, then and in such case the tax thereon shall be paid at the same time and in the same manner, and in like amount, that would be the case if the beneficiaries of such trust received the same directly from the decedent or the persons from whom the property is transferred.

Where an estate for life or for years can be divested by the act or omission of the legatee or devisee, it shall be taxed as if there were no possibility of such divesting.

When property is transferred in trust or otherwise, and the rights, interest or estates of the transferee are dependent upon contingencies or conditions whereby they may be wholly or in part created, defeated, extended or abridged, a tax shall be imposed upon said transfer at the highest rate which, on the happening of any of said contingencies or conditions, would be possible under the provisions of this act, and such tax so imposed shall be due and payable forthwith by the executors or trustees out of the property transferred; provided, however, that on the happening of any contingency whereby the said property, or any part thereof, is transferred to a person or corporation exempt from taxation under the provisions of this act, or to any person taxable at a rate less than the rate imposed and paid, such person or corporation shall be entitled to a return of so much of the tax imposed and paid as is the difference between the amount paid and the amount which said person or corporation should pay under the provisions of this article, with interest thereon at the rate of three per centum per annum from the time of payment. Such return of overpayment shall be made in the manner provided by section 21c (section 9 of this act).

In estimating the value of any estate or interest in property, to the beneficial enjoyment or possession whereof there are persons or corporations presently entitled thereto, no allowance shall be made on account of any contingent incumbrance thereon, nor on account of any contingency upon the happening of which the estate or property, or some part thereof or interest therein might be abridged, defeated or diminished; provided, however, that in the event of such incumbrance taking effect as an actual burden upon the interest of the beneficiary or in the event of the abridgment, defeat or diminution of said estate or property, or interest therein, as aforesaid, a return shall be made to the person properly entitled thereto of a proportionate amount of such tax on account of the incumbrance when taking effect, or so much as will reduce the same to the amount which would have been assessed on account of the actual duration or extent of the estate or interest enjoyed. Such return of tax shall be made in the manner provided by section 21c (section 9 of this act).

Where any property shall, after the passage of this act, be transferred subject to any charge, estate or interest, determinable by the death of any person, or at any period ascertainable only by reference to death, the increase accruing to any person or corporation upon the extinction or determination of such charge, estate or interest, shall be deemed a transfer of property taxable under the provisions of this act in the same manner as though the person or corporation beneficially entitled thereto had then acquired such increase from the person from whom the title to their respective estates or interests is derived.

The tax on any devise, bequest, legacy, gift or transfer limited, conditioned, dependent or determinable upon the happening of any contingency or future event, by reason of which the full and true value thereof cannot be ascertained as provided for by the provisions of this act at or before the time when the taxes become due and payable as hereinbefore provided, shall accrue and become due and payable when the person or corporation beneficially entitled thereto shall come into actual possession or enjoyment thereof.

Estates in expectancy which are contingent or defeasible and in which proceedings for the determination of the tax have not been taken or where the taxation thereof has been held in abeyance, shall be appraised at their full, undiminished value when the persons entitled thereto shall come into the beneficial enjoyment or possession thereof, without diminution for or on account of any valuation theretofore made of the particular estates for purposes of taxation, upon which said estates in expectancy may have been limited.

#### **Deduction of Tax by Administrator, etc.**

S. 4. Any administrator, executor or trustee having in charge or in trust any property for distribution embraced in or belonging to any inheritance, devise, bequest, legacy or gift, subject to the tax thereon as imposed by this act, shall deduct the tax therefrom and within thirty days thereafter he shall pay over the same to the county treasurer as herein provided.

If such property be not in money, he shall collect the tax on such inheritance, devise, bequest, legacy or gift upon the appraised value thereof, from the person entitled thereto.

He shall not deliver, or be compelled to deliver, any property embraced in any inheritance, devise, bequest, legacy or gift, subject to tax under this act, to any person until he shall have collected the tax thereon.

[See notes to the Act of 1905, *ante*, p. 656.]

#### **Payment.**

S. 5. The tax imposed by this act upon inheritances, devises, bequests or legacies shall be paid to the treasurer of the county in which the probate court having jurisdiction, as herein provided, is located; and the tax so imposed upon gifts shall be payable to the state treasurer, and the treasurer to whom the tax is paid shall give the executor, administrator, trustee or person paying such tax, duplicate receipts therefor, one of which shall be immediately transmitted to the state auditor, whose duty it shall be to charge the treasurer so receiving the tax with the amount thereof; and where such tax is paid to the county treasurer he shall seal said receipt with the seal of his office and countersign the same and return it to the executor, administrator or trustee, whereupon it shall be a proper voucher in the settlement of his accounts.

No executor, administrator, or trustee shall be entitled to a final accounting of an estate, in the settlement of which a tax may become due under the provisions of this act, until he shall produce a receipt, so sealed and countersigned by the state auditor, or a certified copy of the same. All taxes paid into the county treasury under the provisions of this act shall immediately be paid into the state treasury upon the warrant of the state auditor and shall belong to and be a part of the revenue fund of the state.

#### **Lien. — Liabilities.**

S. 6. Every tax imposed by this act shall be a lien upon the property embraced in any inheritance, devise, bequest, legacy or gift until paid, and the person to whom such property is transferred and the administrators, executors and trustees of every estate embracing such property shall be personally liable for such tax, until its payment, to the extent of the value of such property.

**Interest.**

S. 7. If such tax is not paid within one year from the accruing thereof, interest shall be charged and collected thereon at the rate of seven (7) per centum per annum from the time the tax is due, unless, by reason of claims upon the estate, necessary litigation or other unavoidable cause of delay, such tax cannot be determined as herein provided; in such case interest at the rate of six per centum per annum shall be charged upon such tax from the accrual thereof until the cause of such delay is removed, after which seven (7) per centum shall be charged.

**Power of Sale.**

S. 8. Every executor, administrator or trustee shall have full power to sell so much of the property embraced in any inheritance, devise, bequest or legacy as will enable him to pay the tax imposed by this act, in the same manner as he might be entitled by law to do for the payment of the debts of a testator or intestate.

**Legacy Charged on Property.**

S. 9. If any bequest or legacy shall be charged upon or payable out of any property, the heir or devisee shall deduct such tax therefrom and pay such tax to the administrator, executor or trustee, and the tax shall remain a lien or charge on such property until paid; and the payment thereof shall be enforced by the executor, administrator or trustee in the same manner that payment of the bequest or legacy might be enforced, or by the county attorney under section 20 of this act. If any bequest or legacy shall be given in money to any person for a limited period, the administrator, executor or trustee shall retain the tax upon the whole amount; but if it be not in money, he shall make application to the court having jurisdiction of an accounting by him to make an apportionment, if the case requires, of the sum to be paid into his hands by such legatee or beneficiary, and for such further order relative thereto, as the case may require.

**Refund.**

S. 10. When any tax imposed by this act shall have been erroneously paid, wholly or in part, the person paying the same shall be entitled to a refundment of the amount so erroneously paid, and the auditor of the state shall, upon satisfactory proofs presented to him of the facts relating thereto, draw his warrant upon the state treasurer for the amount thereof, in favor of the person entitled thereto; provided, however, that all applications for such refunding of erroneous taxes shall be made within three years from the payment thereof.

**Proceedings on Transfers. — Liabilities.**

S. 11. Subdivision 1. If a foreign executor, administrator or trustee shall assign or transfer any stock or obligation in this state, standing in the name of a decedent or in trust for a decedent, liable to any such tax, the tax shall be paid to the state treasurer on the transfer thereof, and no such assignment or transfer shall be valid until such tax is paid.

If any non-resident of this state dies owning personal property in this state such property may be transferred or assigned by the personal representative of, or trustee for the decedent, only after such representative or trustee shall have procured a certificate from the attorney general consenting to the transfer of

such property. Such consent shall be issued by the attorney general only in case there is no tax due hereunder; or in case there is a tax, when the same shall have been paid.

Any personal representative, trustee, heir or legatee of a non-resident decedent desiring to transfer property having its situs in this state may make application to the attorney general for the determination of whether there is any tax due to the state on account of the transfer of the decedent's property and such applicant shall furnish to the attorney general therewith an affidavit setting forth a description of all property owned by the decedent at the time of his death and having its situs in the state of Minnesota, the value of such property at the time of said decedent's death; also when required by the attorney general, a description of and statement of the true value of all the property owned by the decedent at the time of his death and having its situs outside the state of Minnesota, and also a schedule or statement of the valid claims against the estate of the decedent, including the expenses of his last sickness and funeral and the expenses of administering his estate. Such person shall also, on request of the attorney general, furnish to the latter a certified copy of the last will of the decedent in case he died testate, or an affidavit setting forth the names, ages and residences of the heirs at law of the decedent in case he died intestate and the proportion of the entire estate of such decedent inherited by each of said persons, and the relation, if any, which each legatee, devisee, heir, or transferee sustained to the decedent or person from whom the transfer was made. Such affidavits shall be subscribed and sworn to by the personal representative of the decedent or some other person having knowledge of the facts therein set forth.

The statements in any such affidavits as to the value or otherwise shall not be binding on the attorney general in case he believes the same to be untrue. From the information so furnished to him and such other information as he may have with reference thereto, the attorney general shall, with reasonable expedition, determine the amount of tax, if any, due to the state under the provisions of this act and notify the person making the application of the amount thereof claimed to be due. On payment of the tax so determined to be due or in case there is no tax due to the state, the attorney general shall issue a consent to the transfer of the property so owned by the decedent.

No corporation organized under the laws of the state of Minnesota shall transfer on its books any shares of its capital stock standing in the name of a non-resident decedent, or in trust for a non-resident decedent, without the consent of the attorney general first procured as hereinbefore provided for. Any corporation violating the provisions of this section shall be liable to the state for the amount of any tax due to the state on a transfer of any such shares of stock, and in addition thereto a penalty equal to ten per cent of the amount of such tax; to be recovered in a civil action in the name of and for the benefit of the state.

Any person aggrieved by the determination of the attorney general in any matter hereinbefore provided for, may, within twenty days thereafter, appeal to the district court of Hennepin County or Ramsey County, Minnesota, by filing with the attorney general a notice in writing setting forth his objections to such determination and that he appeals therefrom and thereupon within ten days thereafter the attorney general shall transmit the original papers and records which have been filed with him in relation to such application for consent, to the clerk of the district court to which the appeal shall have been taken, and thereupon said

court shall acquire jurisdiction of such application and proceeding. Upon eight days' notice given to the attorney general by the appellant, the matter may be brought on for hearing and determination by such court either in term time or vacation, at a general or special term of said court, or at Chambers as may be directed by order of the court. The said court may determine any and all questions of law and fact necessary to the enforcement of the provisions of this act according to its intent and purpose, and may by order direct the correction, amendment or modification or (of) any determination made by the attorney general.

On such hearing either party may introduce the testimony of witnesses and other evidence in the same manner and subject to the same rules which govern in civil actions. When necessary, the court may adjourn or continue its hearings from time to time, to enable the parties to secure the attendance of witnesses or the taking of depositions.

Depositions may be taken and used in such proceedings in the same manner as is now provided by law for the taking of depositions in civil actions.

The attorney general and any person aggrieved by the order of the district court may appeal to the supreme court from any such order made by said courts, within the time and in the manner now provided by law for the taking of appeals from orders in civil actions.

Subdivision 2. No tax shall be imposed, however, upon any transfer of personal property within this state owned by a non-resident of this state at the time of his death, where by the laws of the state of the decedent's domicile, an inheritance, succession or transfer tax is imposed on transfers of personal property of decedents, provided the laws of such state exempt, or do not impose a tax upon transfers of personal property of residents of Minnesota having its situs in such state. It is hereby expressly declared that the inclusion in this act of the provisions of this subdivision is not an indispensable inducement to the passage of this act and if at any time the provisions of this subdivision shall be held to be unconstitutional, the other provisions of this act shall not be invalidated thereby.

#### **Duty of Company Holding Securities.**

S. 12. No safe deposit company, bank or other institution, person or persons holding securities or assets of a decedent, shall deliver or transfer the same to the executors, administrators or legal representatives of said decedent, or upon their order or request, unless notice of the time and place of such intended transfer be served upon the county treasurer, personally or by representative, to examine said securities at the time of such delivery or transfer. If upon such examination the county treasurer or his said representatives shall for any cause deem it advisable that such securities or assets should not be immediately delivered or transferred, he may forthwith notify in writing such company, bank, institution or person to defer delivery or transfer thereof for a period not to exceed ten days from the date of such notice, and thereupon it shall be the duty of the party notified to defer such delivery or transfer until the time stated in such notice or until the revocation thereof within such ten days. Failure to serve the notice first above mentioned, or to allow such examination, or to defer the delivery of such securities or assets for the time stated in the second of said notices, shall render said safe deposit company, trust company, bank or other institution, person or persons, liable to the payment of the tax due upon the said security or assets, pursuant to the provisions of this act.

**Notice and Proceedings.**

S. 13. Upon the presentation of any petition to any probate court of this state for letters testamentary or of administration, or for ancillary letters, testamentary or of administration, the probate court shall cause a copy of the citation or order for the hearing of such petition to be served upon the county treasurer of his county not less than ten days prior to such hearing. The court shall thereupon, as soon as practicable after the granting of any such letters, proceed to ascertain and determine the value of every inheritance, devise, bequest or legacy embraced in or payable out of the estate in which such letters are granted and the taxes due thereon. The county treasurers of the several counties, and the attorney general, shall have the same rights to apply for letters of administration as are conferred upon creditors by law.

**Appraisers.**

S. 14. The probate court may, in any matter mentioned in the preceding section, either upon its own motion or upon the application of any interested party, including county treasurers and the attorney general, and as often as and when occasion requires, appoint one or more impartial and disinterested persons as appraisers to appraise the true and full value of the property embraced in any inheritance, devise, bequest, or legacy, subject to the payment of any tax imposed by this act.

**Time of Appraisal.**

S. 15. Every inheritance, devise, bequest, legacy, transfer or gift upon which a tax is imposed under this act shall be appraised at its full and true value immediately upon the death of decedent, or as soon thereafter as may be practicable; provided, however, that when such devise, bequest, legacy, transfer or gift shall be of such a nature that its true and full value cannot be ascertained, as herein provided at such time, it shall be appraised in like manner at the time such value first becomes ascertainable.

[See notes to the Act of 1905, *ante*, p. 656.]

**Appraisers. — Proceedings. — Compensation.**

S. 16. The appraisers appointed under the provisions of this act shall forthwith give notice by mail to all persons known to have a claim or interest in the inheritance, devise, bequest, legacy or gift to be appraised, including the county treasurer, attorney general, and such persons as the probate court may by order direct, of the time and place when they will make such appraisal. They shall at such time and place appraise the same at its full and true value, as herein prescribed, and for that purpose the probate court appointing said appraisers is authorized and empowered to issue subpoenas and compel the attendance of witnesses before such appraisers at the place fixed by the appraisers as the place where they will meet to hear such testimony and make such appraisal. Such appraisers may administer oaths or affirmations to such witnesses and require them to testify concerning any and all property owned by the decedent and the true value thereof and any disposition thereof which may have been made by the decedent during his life time or otherwise. The appraisers shall make a report in writing, setting forth their appraisal of the property embraced in each legacy, inheritance, devise or transfer, including any transfer made in contemplation of death, with

the testimony of the witnesses examined and such other facts in relation to the property and its appraisal as may be requested by the attorney general, or directed by the order of the probate court. Such report shall be in writing and one copy thereof shall be filed in the probate court and the others shall be mailed to the attorney general at his office in the city of St. Paul, Minnesota.

Every appraiser shall be entitled to compensation at the rate of \$3.00 per day, and in extraordinary cases such additional sum per day, not exceeding \$7.00 altogether as may be allowed by the probate judge, for each day actually and necessarily employed in such appraisal, and his actual and necessary traveling expenses, and such witnesses and the officer or person serving any such subpoena shall be entitled to the same fees as are allowed witnesses or sheriffs for similar services in courts of record. The compensation and fees claimed by any person for services performed under this act shall be approved by the judge of probate who shall certify the amount thereof, to the state auditor, who shall examine the same, and, if found correct, he shall draw his warrant upon the state treasury for the amount thereof in favor of the person entitled thereto.

Such warrants shall be paid out of the moneys appropriated for the payment of the expenses of inheritance tax collections.

[See notes to the Act of 1905, s. 17, *ante*, p. 658.]

#### **Appraisers' Report.**

S. 17. The report of the appraisers shall be filed with the probate court, and from such report and other proof relating to any such estate before the probate court the court shall forthwith, as of course, determine the true and full value of all such estate and the amount of tax to which the same are liable; or the probate court may so determine the full and true value of all such estates and the amount of tax to which the same are liable without appointing appraisers.

#### **Notice of Appraisal.**

S. 18. The probate court shall immediately give notice, upon the determination of the value of any inheritance, devise, bequest, legacy, transfer or gift which is taxable under this act, and the tax to which it is liable, to all parties known to be interested therein, including the state auditor, attorney general and the county treasurer.

Such notice shall be given by serving a copy on the attorney of all persons who may have appeared by attorney, and as to persons who have not so appeared, by mail, where the addresses of the persons to be notified are known or can be ascertained, otherwise such notice shall be given by publishing said notice once in a qualified newspaper. The expense of such publication shall be certified and paid by the state treasurer in the same manner as hereinbefore provided for the payment of the fees and expenses of appraisers.

#### **Objections to Assessment.**

S. 19. Within thirty days after the assessment and determination by the probate court of any tax imposed by this act, the attorney general, county treasurer or any person interested therein, may file with said court objections thereto, in writing, and praying for a reassessment and redetermination of such tax. Upon any objection being so filed the probate court shall appoint a time for the



hearing thereof and cause notice of such hearing to be given to the attorney general, county treasurer and all parties interested at least ten days before the hearing thereof. Such notice shall be served in the manner provided for in section 18, as amended by section 7 of this act.

At the time appointed in such notice the court shall proceed to hear such objections and any evidence which may be offered in support thereof or opposition thereto; and if, after such hearing, said court shall be of the opinion that a reassessment or redetermination of such tax should be made, it shall, by order, set aside the assessment and determination theretofore made and order a reassessment in the same manner as if no assessment had been made, or the said court may, without ordering a resubmission to appraisers, set aside the assessment and determination theretofore made and fix and determine the value of the property embraced in any legacy, inheritance, devise or transfer and fix and determine the amount of the tax thereon in accordance with the appraisal theretofore filed, so far as the same is not in dispute, and in accordance with the evidence introduced by the respective parties in interest as to any items of the appraisers' report which may have been objected to by any party interested, including the attorney general and the personal representatives of the decedent.

In any case where objections are filed by the attorney general as hereinbefore provided for, he shall, within ten days before the time set by the court for the hearing thereof, file with the clerk of the court a bill of particulars setting forth the items in any such report objected to and as to which he proposes to offer testimony; he shall also mail a copy thereof, within said time, to the personal representative of the decedent or the attorney or attorneys for the latter. In case objections are filed by any other person, he or she shall likewise file such a bill of particulars with the court and serve a copy thereof upon the attorney general within ten days after the filing of the objections.

#### Citation.

S. 20. If the treasurer of any county shall have reason to believe that any tax is due and unpaid under this act after the refusal or neglect of the persons liable therefor to pay the same, he shall notify, in writing, the county attorney of his county, of such failure or neglect, and such county attorney, if he have probable cause to believe that such tax is due and unpaid, shall apply to the probate court for a citation, citing the persons liable to pay such tax to appear before the court on a day specified, not more than three months from the date of such citation, and show cause why the tax should not be paid. The judge of the probate court, upon such application, and whenever it shall appear to him that any such tax accruing under this act has not been paid as required by law, shall issue such citation, and the service of such citation, and the time, manner and proof thereof, and the hearing and determination thereon, shall conform as near as may be to the provisions of the probate code of this state, and whenever it shall appear that any such tax is due and payable and the payment thereof cannot be enforced under the provisions of this act in said probate court, the person or corporation from whom the same is due is hereby made liable to the state for the amount of such tax, and it shall be the duty of the county attorney of the proper county to sue for in the name of the state and enforce the collection of such tax, and all taxes so collected shall be forthwith paid into the county treasury. It shall be the duty of said county attorney to appear for and represent the county treasurer on the hearing of such citation.

**Records.**

S. 21. The auditor of state shall furnish to each probate court a book which shall be a public record, and in which shall be entered by the judge of said court the name of every decedent upon whose estate an application has been made for the issue of letters of administration, or letters testamentary or ancillary letters, the date and place of death of such decedent, names and places of residence and relationship to decedent of the heirs at law of such decedent, the estimated value of the property of such decedent, names and places of residence and relationship to decedent of the heirs at law of such decedent, the names and places of residence of the legatees, devisees and other beneficiaries in any will of any such decedent, the amount of each legacy, and the estimated value of any property devised therein and to whom devised.

These entries shall be made from data contained in the papers filed on such application or in any proceeding relating to the estate of the decedent.

The judge of probate shall also enter in such book the amount of the property of any such decedent, as shown by the inventory thereof, when made and filed in his office, and the returns made by any appraisers appointed by him under this act, and the value of all inheritances, devises, bequests, legacies and gifts inherited from such decedent, or given by such decedent in his will or otherwise as fixed by the probate court and the tax assessed thereon, and the amounts of any receipts for payment thereof filed with him.

The state auditor shall also furnish forms for the reports to be made by such judge of probate, which shall correspond with the entries to be made in such book.

Each judge of probate shall, on the first day of January, April, July and October of each year, make a report in duplicate upon the forms furnished by the state auditor containing all the data and matters required to be entered in such book, one of which shall be immediately delivered to the county treasurer and the other transmitted to the auditor of state.

The register of deeds of each county shall, at the same time, make reports in duplicate to the auditor of state, containing a statement of any conveyance filed or recorded in his office of any property which appears to have been made or intended to take effect in possession or enjoyment after the death of the grantor or vendor, with the name and place of residence of the vendor or vendee, and the description of the property transferred, as shown by such instrument, one of which duplicates shall be immediately delivered to the county treasurer and the other transmitted to the auditor of state.

**Compromise of Tax.**

S. 21 a. The attorney general, by and with the consent and approval of the state auditor, in case of the estate of a non-resident decedent whose estate has not been probated in this state, and the consent and approval of the probate judge in the case of any estate probated in this state, expressed in writing, is hereby authorized and empowered to enter into an agreement with the trustees of any estate in which remainders or expectant estates are of such a nature or so disposed and circumstanced that the taxes are not presently payable or where the interests of the legatees or devisees are or were not ascertainable under the provisions of this chapter, at the time fixed for the appraisal and determination of the tax on estates and interests transferred in fee, and to thereby compound the tax upon such transfers upon such terms as are deemed equitable and expedient; to grant a discharge to said trustees on account thereof upon payment of the

taxes provided for in such composition agreement; provided, however, that no such composition shall be conclusive in favor of said trustees as against the interests of such *cestui que* trust as may possess either present rights of enjoyment, or fixed, absolute or indefeasible rights of future enjoyment or of such as would possess such rights in the event of the immediate termination of any particular estate, unless they consent thereto either personally or by duly authorized attorney, when competent, or by guardian or committee. Composition agreements made, affected and entered into under the provisions of this section shall be executed in triplicate, and one copy thereof filed in the probate court of the county in which the tax is to be paid, one copy in the office of the attorney general and one copy shall be delivered to the persons paying the tax thereunder.

The attorney general shall not consent to the assignment or delivery of any property embraced in any legacy, devise or transfer from a non-resident decedent to a non-resident trustee thereof under the provisions of section 11, as amended by section 2 of this act, where the property embraced in such legacy, devise or transfer is so circumstanced and disposed of that the tax thereon cannot be presently ascertained, but is so circumstanced and disposed of as to authorize him to enter into a composition agreement with reference to the tax on any estate or interest therein as herein provided, until the tax on the transfer of any such estate or interest shall have been compounded and the tax paid as hereinbefore provided for; or in lieu thereof the trustee or other person to whom the possession of such property is delivered shall have made, executed and delivered to the attorney general a bond to the state of Minnesota in an amount equal to the amount of tax which in any contingency may become due and owing to the state on account of the transfer of such property, such bond to be approved by the attorney general and conditioned for the payment to the state of Minnesota of any tax which may accrue to the state under this act on the subsequent transfer or delivery of the possession of such property to any person beneficially entitled thereto. The provisions of sections 4523, 4524 and 4525, Revised Laws 1905, shall apply to the execution of said bond and the qualification of the surety or sureties thereon.

No property having its situs in this state embraced in any legacy or devise bequeathed or devised to a non-resident trustee and circumstanced or disposed of as last hereinbefore described, shall be decreed or distributed by any court of this state to such non-resident trustee until he shall have compounded and paid the tax as provided for in this section; or in lieu thereof given a bond to the state as provided for in this section with reference to transfers of property owned by non-resident decedents.

#### **Proceedings to Obtain Information.**

S. 21 b. The attorney general is hereby authorized and empowered to issue a citation to any person whom he may believe or have reason to believe has any knowledge or information concerning any property which he believes or has reason to believe has been transferred by any person and as to which there is or may be a tax due to the state under the provisions of this act, and by such citation require such person to appear before him at a time and place to be designated in such citation and testify under oath as to any fact or information within his knowledge touching the quantity, value and description of any such property and its ownership and the disposition thereof which may have been made by any person, and to produce and submit to the inspection of the attorney general,

any books, records, accounts or documents in the possession of or under the control of any person so cited. The attorney general shall also have power to inspect and examine the books, records and accounts of any person, firm or corporation, including the stock transfer books of any corporation, for the purpose of acquiring any information deemed necessary or desirable by him for the proper enforcement of this act and the collection of the full amount of the tax which may be due to the state hereunder. Any and all information acquired by the attorney general under and by virtue of the means and methods provided for by this section shall be deemed and held by him as confidential and shall not be disclosed by him except so far as the same may be necessary for the enforcement and collection of the inheritance tax provided for by this act.

Refusal of any person to attend before the attorney general in obedience to any such citation, or to testify, or produce any books, accounts, records or documents in his possession or under his control and submit the same to inspection of the attorney general, when so required, may, upon application of the attorney general, be punished by any district court in the same manner as if the proceedings were pending in such court.

Witnesses so cited before the attorney general, and any sheriff or other officer serving such citation shall receive the same fees as are allowed in civil actions; to be paid by the attorney general out of funds appropriated for the enforcement of this act.

#### **Proceedings for Refund.**

S. 21 c. Whenever, under the provisions of section 3 of this act, as amended, any person or corporation shall be entitled to a return of any part of a tax previously paid, he shall make application to the attorney general for a determination of the amount which he is entitled to have returned, and on such application shall furnish the attorney general with affidavits and other evidence showing the facts which entitle him to such return and the amount he is entitled to have returned. The attorney general shall thereupon determine the amount, if any, which the applicant is entitled to have returned, and shall certify his findings in regard thereto to the state auditor who shall thereupon issue his warrant on the state treasurer for the amount so certified by the attorney general and deliver such warrant to the persons entitled to the refund.

It shall be the duty of the state treasurer to pay such warrants out of any funds in the state treasury not otherwise appropriated. The moneys necessary to pay such warrants are hereby appropriated out of any moneys in the state treasury not otherwise appropriated.

Any person aggrieved by the determination of the attorney general may appeal to the district court in the manner and with the same effect as is provided for in section 11, as amended by section 2 of this act.

#### **Warrant to County Treasurers.**

S. 21 d. On or before the first of November in each year the state auditor shall compute the amount of inheritance tax which has been paid into the state treasury by the county treasurers of the several counties of this state, from estates of residents thereof, during the preceding fiscal year ending July 31st, and thereupon draw his warrant on the state treasurer in favor of each county from which any tax shall have been received during the fiscal year ending July 31st next preceding, for ten per cent of the amount of the inheritance tax money so received

from each county respectively, less ten per cent of any tax which has been returned under the provisions of the last preceding section and which was originally paid to the county treasurer of any such county, and transmit the same to the county auditor of each county, to be placed to the credit of the county revenue fund; provided, however, that the provisions of this section shall apply only to such moneys as shall be received as a tax on transfers from persons who shall die subsequent to the passage of this amendatory act.

It shall be the duty of the state treasurer to pay such warrants out of any funds in the state treasury not otherwise appropriated. The moneys necessary to pay such warrants are hereby appropriated out of any moneys in the state treasury not otherwise appropriated.

**Seal.**

S. 21 e. The attorney general shall provide himself with a seal whereon shall be inscribed the words: "Attorney General, State of Minnesota, Inheritance Tax." All his formal official acts done and performed under the provisions of this act shall be authenticated with such seal.

**Assistant Attorney General.**

S. 21 f. The attorney general is hereby authorized to designate one of his assistants as "assistant attorney general in charge of inheritance tax matters." Such designation shall be in writing and filed in the office of the secretary of state and shall continue in force until revoked by the attorney general. The assistant so designated, so long as such designation remains unrevoked, shall have and may exercise all the rights, powers and privileges conferred on the attorney general by the provisions of this act and all the duties and obligations hereby imposed upon the attorney general are likewise imposed upon the assistant so designated.

Chapter 288, Laws 1905, approved April 19, 1905.

Chapter 209, Laws 1911, approved April 18, 1911.

## MISSISSIPPI.

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### In General.

There is no inheritance tax at present in Mississippi.

### Constitutional Limitations.

#### Mississippi Constitution 1890, a. 4.

S. 112. Taxation shall be uniform and equal throughout the state. Property shall be taxed in proportion to its value. The legislature may, however, impose a tax per capita upon such domestic animals as from their nature and habits are destructive of other property. Property shall be assessed for taxes under general laws, and by uniform rules, according to its true value. But the legislature may provide for a special mode of valuation and assessment for railroads, and railroad and other corporate property, or for particular species of property belonging to persons, corporations or associations not situated wholly in one county. But all such property shall be assessed at its true value, and no county shall be denied the right to levy county and special taxes upon such assessment as in other cases of property situated and assessed in the county

## MISSOURI.

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### In General.

Missouri's first attempt at a collateral inheritance tax in 1895 was held unconstitutional. A second attempt in 1899 fared better. Collateral inheritances only are taxed. The rate is uniformly 5 per cent and there is no amount exempted. The inheritances exempt are those to father, mother, husband, wife, lineal descendant and adopted child. This law has produced from \$200,000 to \$400,000 annually. An interesting detail is that the proceeds of the tax are devoted to the support of the University of Missouri, providing a sort of compulsory bequest for higher education from every estate.

Missouri taxes stock of a Missouri corporation owned by a non-resident; it taxes stock of a corporation organized elsewhere owning property in Missouri, and it apparently taxes stock of a foreign corporation owned by a non-resident if the stock certificate is kept in Missouri.

### Constitutional Limitations.

**Missouri Revised Statutes 1899, Vol. 1. Missouri Constitution, a. 4.**

**S. 43. Appropriations, order of.** All revenue collected and moneys received by the state from any source whatsoever shall go into the treasury, and the general assembly shall have no power to divert the same, or to permit money to be drawn from the treasury, except in pursuance of regular appropriations made by law. All appropriations of money by the successive general assemblies shall be made in the following order:—

*First*, For the payment of all interest upon the bonded debt of the state that may become due during the term for which each general assembly is elected.

*Second*, For the benefit of the sinking fund, which shall not be less annually than two hundred and fifty thousand dollars.

*Third*, For free public school purposes.

*Fourth*, For the payment of the cost of assessing and collecting the revenue.

*Fifth*, For the payment of the civil list.

*Sixth*, For the support of the eleemosynary institutions of the state.

*Seventh*, For the pay of the general assembly, and such other purposes not herein prohibited as it may deem necessary; but no general assembly shall have power to make any appropriation of money for any purpose whatsoever, until the respective sums necessary for the purposes in this section specified have been set apart and appropriated or to give priority in its action to a succeeding over

**Missouri Constitution 1875, a. 10.**

S. 3. **Taxes for public purposes only. — Must be uniform.** Taxes may be levied and collected for public purposes only. They shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax, and all taxes shall be levied and collected by general laws.

**Missouri Constitution 1909, a. 10.**

S. 4. **Taxes in proportion to value.** All property subject to taxation shall be taxed in proportion to its value.

S. 6. **Property exempt from taxation.** The property, real and personal, of the state, counties and other municipal corporations, and cemeteries, shall be exempt from taxation. Lots in incorporated cities or towns or within one mile of the limits of any such city or town, to the extent of one acre and lots one mile or more distant from such cities or towns, to the extent of five acres, with the buildings thereon, may be exempted from taxation, when the same are used exclusively for religious worship, for schools, or for purposes purely charitable; also, such property, real or personal, as may be used exclusively for agricultural or horticultural societies: Provided, That such exemptions shall be only by general law.

S. 7. **Other exemptions void.** All laws exempting property from taxation, other than the property above enumerated, shall be void.

**List of Statutes.**

- 1895. Statutes of Missouri, p. 278.
- 1897.     "     "     "     p. 237.
- 1899.     "     "     "     p. 328.
- 1899. Revised Statutes of Missouri, p. 185, a. 16, ss. 299-322.
- 1901. Statutes of Missouri, p. 43.
- 1903.     "     "     "     p. 52.
- 1909.     "     "     "     p. 56, s. 11.
- 1909. Revised Statutes of Missouri, Vol. 1, a. 14, ss. 309 to 331.

**Inheritance Tax is a "Tax."**

Mo. Const., a. 10, s. 3, provides that "taxes may be levied and collected for public purposes only." The court notices the argument that an inheritance tax is not a tax, strictly speaking, but a bonus or price exacted as a condition upon which persons take the estate whose owner is dead. But still the vital point remains that by whatever name this burden may be called, still it falls within the purview of the word "taxes," in its generic sense in the constitution, as that word includes every character and kind of tax, general or special. The power of the state to demand such a bonus is referable only to the taxing power. *State v. Switzler*, 143 Mo. 287, 315, 45 S. W. 245, 40 L. R. A. 280, 65 Am. St. Rep. 653.

**How to Attack the Statute.**

The validity of the Mo. St. 1899, p. 186, was attacked by certiorari in *State v. Henderson*, 160 Mo. 190, 60 S. W. 1093.



## THE VOID STATUTES OF 1895 AND 1897.

Mo. St. 1895, p. 278.

AN ACT PROVIDING FOR THE ENDOWMENT OF THE STATE UNIVERSITY, and for the establishment and endowment of free scholarships of merit therein in each county.

Objections to the title of Mo. St. 1895 were not considered by the court, which found the act void on other grounds, in *State v. Switzer*, 143 Mo. 287, 331, 45 S. W. 245, 40 L. R. A. 280, 65 Am. St. Rep. 653.

Mo. St. 1895, p. 278, s. 1. Approved April 1, 1895.

S. 1. All property conveyed by will, or by the death of an intestate, or by deed, grant, bargain, sale or gift, made or intended to take effect in possession or enjoyment after the death of the grantor, or bargainor, or any person or persons, either directly or in trust, or otherwise, whereby a beneficial interest shall be created in possession or expectancy to any property or the income thereof, to any person other than the father, mother, husband, wife or direct lineal descendant of the testator, intestate, grantor or bargainor, except property conveyed for some educational, charitable or religious purpose exclusively, shall be subject to the payment of a collateral succession tax of five dollars for each and every one hundred dollars of the clear market value of such property, where the money or property affected shall be ten thousand dollars or less in value, and where the money or property affected exceeds ten thousand dollars in value, the same shall be subject to a tax of five dollars for each and every one hundred dollars of the clear market value thereof, up to and including ten thousand dollars in value, and a tax of seven and one-half dollars, in addition, for every such one hundred dollars in value in excess of ten thousand dollars; and for the enforcement and collection of such tax there is hereby created against the property affected thereby a first lien in favor of the state of Missouri, upon which a civil action may be prosecuted in any court having competent jurisdiction; and when collected, such tax shall be paid into the county treasury, of the county where the testator, intestate, grantor or bargainor resided, or in the case where there is no such residence in the state, then such tax shall be paid into the county treasury of the county where such property exists or is situate. All taxes provided by this section, which shall not be paid within one year after the death of the person rendering such property subject to taxation, shall bear interest at the same rate, from the date of the death of such person, as is now provided by law for delinquent taxes, and suits therefor may be prosecuted by the same person provided by law for the purpose of instituting suits for delinquent taxes, unless the county court shall make an order requiring the prosecuting attorney to institute suits for the recovery of such collateral succession taxes.

### Classification by Relationship Upheld. — Progressive Tax Condemned.

The court seems to approve of discrimination among classes of relatives and disapprove of a tax graduated according to the value

of the interest received. The statute of 1895 is void as contravening Mo. Const., a. 10, s. 3, as it is not "uniform upon the same class of subjects within the territorial limits of the authority levying the tax." It is clear that where the amount of property received is made the basis of the tax, uniformity is only attainable by levying the same per cent upon all property belonging to persons bearing the same relation to the decedent.

While the legislature might perhaps distribute the collaterals according to the different degrees of kinship to the decedent, and levy a different rate upon the different degrees, yet when it ignores all such natural classification and makes the amount of money received by each the test of classification it runs counter to another principle that is wellnigh universally accepted, that a uniform rate of taxation secures equality of burden. To levy a different rate simply because the amount of each man's holding is different would produce favoritism and destroy that principle of equality before the law which is the boast of free government. If it be urged that the one receiving the larger bounty enjoys the greater privilege, still the principle of uniformity answers that the value of his right to receive is in direct proportion to the value of the property to which he succeeds, and must, if taxation is to be uniform, be taxed in that proportion or according to one uniform rate. *State v. Switzler*, 143 Mo. 287, 333, 45 S. W. 245, 40 L. R. A. 280, 65 Am. St. Rep. 653.

### **Void as a Property Tax.**

The statutes of 1895 and 1897 are void as property taxes, imposing an additional burden on property. *State v. Henderson*, 160 Mo. 190, 215, 60 S. W. 1093.

A testator died December 6, 1896, and his will was probated December 7, 1896, and the court holds that the questions involved are governed by Mo. St. 1895, as by its terms the devolution of the property and the right of the state to tax accrues immediately upon the death of the testator. The Mo. Const., a. 10, s. 4, does not render Mo. St. 1895 unconstitutional if it is a succession tax, as such a tax is not a tax upon property in the ordinary sense, but is in the nature of an excise or bonus exacted by the state upon the privilege or right to inherit or succeed to an estate.

Mo. St. 1895, as amended in 1897, requires the tax to be levied upon the appraised value of the whole estate left by the deceased. The tax is at once levied upon that estate and the personal representatives of the deceased, not the devisees and legatees, are required

to pay the tax. The mere calling such a tax a succession tax does not make it different from an ordinary tax upon property and the effect and operation are identical with an ordinary property tax. But the court holds that the language of the act imposes a tax directly upon the property of the decedent and not upon those who may succeed to his estate, and if it is a property tax it is unconstitutional, as it subjects the estate to an additional property tax to that levied upon all other like property in the state for the same year and is not levied in proportion to its value. *State v. Switzler*, 143 Mo. 287, 330, 45 S. W. 245, 40 L. R. A. 280, 65 Am. St. Rep. 653.

Mo. St. 1895, approved April 1, 1895, p. 278, s. 2, provides a filing fee for corporations.

**Mo. St. 1895, p. 278.** Approved April 1, 1895.

S. 5. All taxes or fees or moneys collected or received under the provisions of this act during each month by any county official, and for the purpose of this act the city of St. Louis shall be affected through its corresponding officers as if it were a county, shall be paid during the first week of the following month to the county treasurer, who shall thereupon credit three-fourths of the moneys so received to a fund hereby created, to be known as "the state university scholarship fund," and remit the remaining one-fourth to the state treasurer; and from all taxes and fees received from corporations, and all escheats received under the provisions of this act, the state treasurer shall monthly, in the same manner, reserve one-fourth, and remit the remaining three-fourths in each instance to the county treasurer of the county in which the corporation is located or from which the escheat came, to be credited to "the state university scholarship fund" of such county.

### **Public Purpose.**

The legislature has a right to levy an inheritance tax so long as it is for a public purpose. *State v. Switzler*, 143 Mo. 287, 316, 45 S. W. 245, 40 L. R. A. 280, 65 Am. St. Rep. 653.

### **Scholarship Fund not a Public Purpose.**

The act of 1895 levied an inheritance tax for the purpose of an endowment for the state university and further to be paid to students "while attending the university for defraying the expenses of such attendance," in what was known as the State University scholarship fund. It was argued that this was no different from providing free tuition at the State University. But the court says it is one thing to provide for the establishment and maintenance of a system of public education and a wholly different thing to support private individuals who attend a university and public schools by public taxation; and the court concludes that the tax

is levied for a purely private purpose and for that reason is in contravention of the constitution of Missouri. *State v. Switzler*, 143 Mo. 287, 326, 45 S. W. 245, 40 L. R. A. 280, 65 Am. St. Rep. 653.

The case of *State v. Switzler* was followed in declaring the act of 1895 void as not for a public purpose in *Simmons Medicine Co. v. Ziegenhein*, 145 Mo. 368, 47 S. W. 10.

Mo. St. 1895, approved April 1, 1895, p. 278, ss. 6-11 cover the collection and expenditure of the money provided by the statute.

The act of 1897, p. 237, repealed the progressive feature of the original statute of 1895 and added specific provisions for the valuation of inheritances and enforcing collection of taxes. *State v. Switzler*, 143 Mo. 28, 313, 45 S. W. 245, 40 L. R. A. 280, 65 Am. St. Rep. 653.

The statute of 1897 is void. See notes to the Act of 1895, *supra*, p. 679.

### THE VALID STATUTE OF 1899.

Mo. St. 1899, p. 328.

AN ACT TO TAX COLLATERAL INHERITANCES, legacies, gifts and conveyances, in certain cases, to provide revenue for educational purposes, for the maintenance and support of the Missouri state university and its departments. How and when collected and where deposited.

S. 1. All property which shall pass by will, or by the intestate law of this state from any person who may die seized or possessed of the same while a resident of this state, or, if decedent was not a resident of this state at the time of death, which property or any part thereof shall be within this state, or any interest therein or income therefrom, which shall be transferred by deed, grant, bargain, sale or gift, made or intended to take effect in possession or enjoyment after the death of the grantor, bargainor, vendor or donor, to any person or persons, or to any body politic or corporate, either directly or in trust or otherwise, or by reason whereof any person or body politic or corporate shall become beneficially entitled in possession or expectancy, to any property or the income thereof, other than to or for the use of the father, mother, husband, wife, legally adopted children or direct lineal descendant of the testator, intestate, grantor, bargainor, vendor or donor, except property conveyed for some educational, charitable or religious purpose exclusively shall be and is subject to the payment of a collateral inheritance tax of five dollars for each and every one hundred dollars of the clear market value of such property, and at and after the same rate for every less amount, to be paid to the collector of revenue of the proper county, and for the purposes of this act the city of St. Louis shall be affected through its corresponding officers as if it were a county, for the use of the state as hereinafter provided; and for the enforcement and collection of such tax there is hereby created against the property affected thereby a first lien in favor of the state of Missouri, upon which a civil action may be prosecuted in any court having proper jurisdiction; and all heirs, next of kin, legatees and devisees, administrators, executors and trustees, grantees, vendees and donees shall be liable for any and all such taxes until the same shall

have been paid as hereinafter directed: Provided, that all collateral inheritance, taxes shall be sued for within five years after they are due and legally demandable, otherwise they shall cease to be a lien as against any purchasers of the property: Provided further, that the word "property," as used in this section, shall be taken to mean the property or interest therein passing or transferred to individual legatees, devisees, heirs, next of kin, grantees, vendees or donees, and not as the property or interest therein of the testator, intestate, grantor, bargainor, vendor or donor.

### **Uniform, though confined to Collateral Inheritances.**

The act of 1899 does not violate the rule as to uniformity prescribed by Mo. Const., a. 10, s. 3, as the statute imposes the same per cent upon all inheritances which are taxed; that is, collateral inheritances. The court says that the legislature has seen fit to make the classification and unless it is so arbitrary that the court can say beyond doubt that it transcends constitutional limitations the court is bound to accept it. The court finds no provision of the constitution which it violates and accordingly it seems to be a natural and reasonable classification. *State v. Henderson*, 160 Mo. 190, 216, 60 S. W. 1093.

### **Not a Property Tax.**

The statute of 1899 does not impose a tax upon the property of the decedent in addition to its burden in common with all other property, as was the case in the acts of 1895 and 1897; but it is levied only upon its transmission by will, descent or grant. It is a bonus or duty levied upon the right or privilege of the devisee, heir or distributee of receiving his share. While referring to the property, devised or inherited it does so only to secure uniformity among the beneficiaries receiving the property, the object being to tax each in proportion to his or her interest received and for that privilege. *State v. Henderson*, 160 Mo. 190, 215, 60 S. W. 1093.

### **Not Void as an Appropriation.**

This statute is not obnoxious to the Mo. Const., a. 4, s. 43, which provides the order of payment of money received into the treasury. It was contended that this act which provides that the receipts from the inheritance tax law shall be appropriated to the state university is itself an appropriation of the money, as every dollar raised thereby is instantly and perpetually appropriated to the maintenance of the university. The court replies that the statute itself forbids expenditure save in pursuance of regular appropriations of the general assembly. *State v. Henderson*, 160 Mo. 190, 213, 60 S. W. 1093.

**Exemptions Valid.**

It was argued that the exemptions in the act of 1899 violated Mo. Const., a. 10, ss. 6 and 7, which limit the amount of property which may be exempted from taxation, and as this statute prescribes no limit to the amount of property it is therefore void. The argument is predicated on the fact that this is a property tax, as the section of the constitution relied upon deals directly with property taxation. But the court holds that this is valid, as the statute is not a property tax. *State v. Henderson*, 160 Mo. 190, 217, 60 S. W. 1093.

Sections 2 to 23 cover the assessment and collection of the tax.

**Application of Proceeds Valid.**

Mo. Const., a. 4, s. 43, provides that all revenue in money received by the state shall go into the treasury and that all appropriations shall be made in the order set forth in the section. It was argued that this means that all revenue shall go into one common general fund unfettered and unpledged and that these words prohibit the creation of any special fund in the treasury to be supplied out of revenue provided by the general assembly; and that therefore the Mo. St. 1899, which provided that the receipts from the inheritance tax should be accredited to the "state seminary moneys" rendered the act void. The court replies that the constitution itself provides elsewhere for special funds and holds that the constitution simply requires the general assembly to proceed in the order designated in passing its appropriation bills. In prescribing the order for the passage of the appropriation bill there was no intention to create special liens upon the money in the treasury or give any priority of payment to one appropriation over another. *State v. Henderson*, 160 Mo. 190, 211, 60 S. W. 1093.

**AMENDMENTS.**

Mo. St. 1901, p. 43, amends Revised Statutes 1899, c. 1, s. 302, by providing that one-fifth instead of one-eighth of the receipts shall be turned over to the school of mines and metallurgy.

Mo. St. 1903, p. 52, amended Revised Statutes 1899, c. 1, a. 16, s. 321, by giving the probate judge one-half instead of one-fifth of the sums collected by the county collectors.

Mo. St. 1909, p. 56, s. 11, makes an appropriation from the inheritance tax.

**THE PRESENT ACT.**

[References are to the Missouri Revised Statutes of 1909.]

**S. 309. Estates subject to payment of collateral inheritance tax.** All property which shall pass by will, or by the intestate laws of this state from any person who may die seized or possessed of the same while a resident of this state, or, if decedent was not a resident of this state at the time of death, which property or any part thereof shall be within this state, or any interest therein or income therefrom which shall be transferred by deed, grant, bargain, sale or gift, made or intended to take effect in possession or enjoyment after the death of the grantor, bargainor, vendor or donor, to any persons, or to any body politic or corporate, either directly or in trust or otherwise, or by reason whereof any person or body politic or corporate shall become beneficially entitled in possession or expectancy, to any property or the income thereof, other than to or for the use of the father, mother, husband, wife, legally adopted children, or direct lineal descendant of the testator, intestate, grantor, bargainor, vendor or donor, except property conveyed for some educational, charitable or religious purpose exclusively, shall be and is subject to the payment of a collateral inheritance tax of five dollars for each and every one hundred dollars of the clear market value of such property and at and after the same rate for every less amount, to be paid to the collector of revenue of the proper county, and for the purposes of this article, the city of St. Louis shall be affected through its corresponding officers as if it were a county, for the use of the state as hereinafter provided; and for the enforcement and collection of such tax there is hereby created against the property affected thereby a first lien in favor of the state of Missouri, upon which a civil action may be prosecuted in any court having a proper jurisdiction; and all heirs, next of kin, legatees, and devisees, administrators, executors and trustees, grantees, vendees and donees shall be liable for any and all such taxes until the same shall have been paid as hereinafter directed: *Provided*, that all collateral inheritance taxes shall be sued for within five years after they are due and legally demandable, otherwise they shall cease to be a lien as against any purchasers of the property: *Provided, further*, that the word "property," as used in this section, shall be taken to mean the property or interest therein passing or transferred to individual legatees, devisees, heirs, next of kin, grantees, vendees or donees, and not as the property or interest therein of the testator, intestate, grantor, bargainor, vendor or donor.

[See notes to the Acts of 1895 and 1899, *ante*, pp. 678, 682.]

**S. 310. Tax, when due and payable.** All taxes imposed by this article, except as hereinafter provided, shall be due and payable at the death of the person rendering such property subject to such taxation, and interest at the same rate as is now provided by law for delinquent taxes, shall be charged and collected thereon for such time as said tax is not paid: *Provided*, that if said tax is paid within one year from the accruing thereof no interest shall be charged or collected thereon, and if said tax is paid within six months from the accruing thereof a discount of five per cent shall be allowed and deducted from said tax: *Provided, further*, that if by reason of claims made upon the estate, necessary litigation or other unavoidable cause or delay the estate of the decedent or any part thereof can not be settled up at the end of the year from his or her decease, the probate court, or the judge thereof in vacation, may make necessary extensions of time for the payment of such taxes, but no single extension shall exceed one year.

and in such cases only six per cent per annum shall be charged upon the said tax from the death of the decedent to the expiration of the period for which the extension of time was granted, after which interest, at the same rate as is now provided by law for delinquent taxes shall be charged; and in all cases the tax on real estate shall remain a lien on the real estate on which the same is chargeable until paid, and the executors, administrators or trustees shall give a bond, to the people of the state of Missouri, in a penalty of three times the amount of the said tax, with such sureties as the probate judge of the proper county may approve, conditioned for the payment of said tax, and interest thereon, at the expiration of such period, which bond shall be filed in the office of said probate judge.

**S. 311. When and to whom collector shall account.** The collector of each county shall, on or before the fifteenth day of each month, pay to the state treasurer all taxes, collected or received by him under the provisions of this article, before the first day of said month, deducting therefrom his commissions, as provided in section 331 of this article, and all lawful disbursements made by him, in accordance with the provisions of this article, upon the certificate of the probate judge of his county of which collection and payment he shall make a report under oath to the state auditor, on or before the fifth day of each month, stating for what estate paid, and in such form and containing such particulars as the state auditor may prescribe; and for any failure to make such monthly payments he shall be subject to the penalty prescribed by section 11474, of the Revised Statutes of 1909.

**S. 312. Money to be deposited by state treasurer. — How used.** The moneys received by the state treasurer under the provisions of this article shall be deposited in the state treasury to the credit of the fund now existing in the state treasury and known as the "state seminary moneys," for the maintenance, support and better equipment of the buildings, apparatus, books, instruction, etc., of the university of the state of Missouri, to an amount not exceeding in any one year the equivalent of one-tenth of one mill upon every dollar of the assessed valuation of taxable property of this state for said year: *Provided*, that one-fifth of all such moneys so received shall be devoted to the use of the school of mines and metallurgy, a department of the said university: *Provided further*, that if the net amount deposited in any one year by the state treasurer under the provisions of this article to the credit of the "state seminary moneys" be not equivalent to one-tenth of one mill upon every dollar of the assessed valuation of taxable property of this state for the said year, it shall be the duty of the state treasurer to make good this deficiency out of the first moneys received under the provisions of this article in the next succeeding year: *Provided, further*, that all said moneys shall be disbursed in pursuance of regular appropriations of the general assembly, in accordance with the provisions of section 1450 of the Revised Statutes of 1909.

[See notes to the Acts of 1895 and 1899, *ante*, pp. 680, 682.]

**S. 313. When state treasurer shall deposit moneys received to credit of "Educational fund."** The moneys received by the state treasurer under the provisions of this article which shall exceed in any one year the amount required by section 312 of this article to be deposited to the credit of the "state seminary moneys," shall be deposited in the state treasury to the credit of a fund to be known as the "educational fund," which is hereby created and established.



The moneys deposited in the said fund shall be appropriated by the general assembly for public educational purposes.

**S. 314. When and how tax is paid on remainders, reversions or other estates in expectancy, real or personal.** When any grant, gift, legacy or inheritance upon which a tax is imposed by section 309 of this article, shall be a remainder, reversion or other expectancy, real or personal, the tax on such estate shall not be payable, nor interest begin to run thereon, until the person or persons liable for the same shall come into actual possession of such estate by the termination of the estate for life or years, and the tax shall be assessed upon the value of the estate at the time the right of possession accrues to the owner as aforesaid: *Provided*, that in all such cases the tax on real estate shall remain a lien on the real estate on which the same is chargeable until paid: *Provided, further*, that the person or persons, or body politic or corporate beneficially interested in the property as aforesaid shall make a full, verified return of said property to the probate judge of the proper county and file the same in his office within one year from the death of the decedent, and within that period give a bond in form and to the effect prescribed in section 310 of this article, conditioned for the payment of said tax at such time or period as the right of possession shall accrue to the owner or the representatives of said owner as aforesaid, and in case of failure so to do, the tax shall be immediately payable and collectible on the clear market value of the estate, to be determined as hereinafter provided: *Provided further*, that the owner shall have the right to pay the tax at any time prior to his or her coming into possession, and in such cases, the tax shall be assessed in the manner hereinafter provided, on the value of the estate at the time of the payment of the tax, after deducting the value of the life estate or estates for years.

**S. 315. Property bequeathed to executors or trustees in lieu of commissions, excess above fair compensation subject to tax.** Where a testator bequeaths or devises property to one or more executors or trustees in lieu of their commissions or allowances, which property otherwise would be liable to said tax, or appoints them his residuary legatees, and said bequests, devises or residuary legacies exceed what would be a fair compensation of their services, such excess shall be subject to the payment of the said tax; the rate of compensation to be fixed by the probate court having jurisdiction in the case.

**S. 316. Administrators or trustees not required to deliver specific legacy or other property until tax is paid, etc.** Any administrator, executor or trustee having in charge or trust any legacy or property for distribution, subject to the said tax, shall deduct the amount of the tax therefrom, or if the legacy or property be not money, he shall demand payment of the amount of the tax thereon upon the appraised value thereof from the legatee or person entitled to such property, and he shall not deliver, or be compelled to deliver, any specific legacy or property subject to tax until he shall have collected the tax thereon; and in case of neglect or refusal on the part of said legatee or person to pay the same, such specific legacy or property, or so much thereof as shall be necessary shall be sold by such administrator, executor or trustee at public sale, after notice to such legatee or person, and the balance that may be left in the hands of the administrator, executor or trustee, after deducting the amount of the said

tax, shall be distributed, as is or may be directed by law; and whenever any such legacy or property shall be charged upon or payable out of real estate, the heir or devisee before paying the same, shall deduct the amount of the said tax therefrom, and pay the amount so deducted to the executor or other trustee, and the same shall remain a charge on such real estate until paid and the payment thereof shall be enforced by the executor or other trustee in the same manner that the payment of such legacy or property might be enforced, or by the prosecuting attorney of the proper county as provided in section 329 of this article.

**S. 317. Duty of executor or trustee when legacy or property subject to tax is given for limited period.** If the legacy or property subject to the tax imposed by this article be given in money to any person for a limited period, the executor or other trustee shall retain the tax upon the whole amount, but if it be not in money, he shall make application to the court having jurisdiction of an accounting by him, to make an apportionment, if the case require it, of the sum to be paid into his hands by such legatee or person, and for such further action relative thereto as the case may require.

**S. 318. Tax coming into hands of executor, etc., shall be paid to county collector, receipt sent state treasurer, etc.** Every sum of money retained by an executor, administrator or other trustee, or paid into his hands, for any tax imposed by this article on any property, shall be paid by him within thirty days thereafter, to the collector of revenue of the county in which the probate court, having jurisdiction of the estate or accounts, is situated, and the said collector shall give, and every executor, administrator or other trustee shall take duplicate receipts from him of such payment, one of which receipts he shall immediately send to the state treasurer, whose duty it shall be to charge the collector so receiving the tax with the amount thereof, and shall seal said receipt with the seal of his office and countersign the same and return it to the executor, administrator or other trustee, whereupon it shall be a proper voucher in the settlement of his accounts, but an executor, administrator or other trustee shall not be entitled to credits in his accounts, nor be discharged from liability for such tax, unless he shall produce a receipt so sealed and countersigned by the state treasurer, or a copy thereof certified by him.

**S. 319. When, how and by whom proportion of tax is repaid to legatee, etc.** Whenever any debts shall be proven against the estate of a decedent, after the payment of legacies or distribution of property from which the said tax has been deducted or upon which it has been paid, and a refund is made by the legatee, devisee, heir or next of kin, a proportion of the tax so paid shall be repaid to him by the executor, administrator or other trustee, if the said tax has not been paid to the county collector or by the county collector if the tax has been paid to him. The county collector shall pay such sums, upon the order of the probate judge, out of any money that he has in his possession or shall receive on account of the tax imposed by the provisions of this article. The state auditor shall credit the county collector with all such sums paid by him upon the order of the probate judge.

**S. 320. Duty of executor or trustee to notify probate court, when real estate of decedent is subject to tax.** Whenever any of the real estate of which

any decedent may die seized shall be subject to the tax provided by this article, it shall be the duty of the executors, administrators or other trustees to give information thereof, in writing, to the probate judge of the court having jurisdiction of the estate of the decedent, within six months after they undertake the execution of their expected duties, or if the fact be not known to them within that period, within one month after the same shall have come to their knowledge, and it shall be the duty of the owners of such estate, immediately upon the vesting of the estate, to give information thereof, in writing, to the probate judge aforesaid.

**S. 321. Transfers of stocks or loans in this state, liable to tax, made by foreign executors, administrators or trustees. — Tax when and where paid and who liable for failure to pay.** Whenever any foreign executor, administrator or other trustee shall assign or transfer any stocks or loans in this state standing in the name of a decedent, or in trust for a decedent, which shall be liable for the tax imposed by the provisions of this article, such tax shall be paid, on the transfer thereof, to the collector of the county where the transfer is made; otherwise the corporation permitting such transfer shall become liable to pay such tax: *Provided*, that such corporation had knowledge before such transfer that said stocks or loans were liable for such tax.

**S. 322. Probate court to appoint competent person as appraiser to fix valuation of estates subject to payment of tax.** The probate judge of the court having jurisdiction of the estate of the decedent, upon the application of any interested party, including county collectors, or upon his own motion, shall, as often and whenever occasion may require, appoint a competent person as appraiser to fix the valuation of estates which shall be subject to the payment of any tax imposed by this article. Every such appraiser shall forthwith give notice by mail to all persons known to have a claim or interest in the property to be appraised including the county collector of revenue, and to such persons as the probate judge may by order direct, of the time and place when he will appraise such estate or property. He shall at such time and place appraise the same at its clear market value, at the time of the death of the decedent, excluding therefrom an amount equivalent to the sum of all of the lawful debts of the decedent, and for that purpose the said appraiser is authorized to issue subpoenas and to compel the attendance of witnesses before him and to take the evidence of such witnesses under oath concerning such property and the value thereof; and he shall make report thereof and of such value, in writing, to the said probate judge, together with the depositions of the witnesses examined, and such other facts in relation thereto, and to the said matter as said probate judge may order or require. Every appraiser shall be paid on the certificate of the probate judge, at the rate of three dollars per day for every day actually and necessarily employed in such appraisal, and his actual and necessary traveling expenses, and the fees paid such witnesses, which fees shall be the same as those now paid to witnesses subpoenaed to attend in courts of record, by the county collector out of any funds he may have in his hands on account of any tax imposed under the provisions of this article.

**S. 323. Report of appraiser to be filed in probate court, assessment of cash value, amount of tax, etc.** The report of the appraiser shall be filed in the office of the probate judge, and from such report and other proof relating

to any such estate before the probate judge, the probate judge shall forthwith assess and fix the cash value of all estates and the amount of tax to which the same are liable; or, the probate judge may so determine the cash value of all such estates and the amount of the tax to which the same are liable without appointing an appraiser. The value of every limited estate, income, interest or annuity dependent upon any life or lives in being shall be determined by the rule, method and standards or [of] mortality and value, which are employed by the superintendent of the insurance department in ascertaining the value of policies of life insurance and annuities, save that the rate of interest for computing the value of such estates or interest shall be five per centum per annum; and the superintendent of the insurance department shall, on the application of any probate judge, determine the value of such limited estates or interests upon the facts contained in such report, and certify the same to the probate judge, and his certificate shall be conclusive evidence that the method of computations adopted therein is correct. Any person dissatisfied with the appraisal or assessment and determination of tax, may appeal therefrom to the probate judge within sixty days from the fixing, assessing and determination of the tax by the probate judge as herein provided, upon filing in the office of the probate judge a written notice of appeal which shall state the grounds upon which the appeal is taken and on paying or giving security, approved by the probate judge, to pay all costs of the proceeding. The probate judge shall immediately give notice, upon the determination by him as to the value of any estate which is taxable under this article and of the tax to which it is liable, to all persons known to be interested therein.

**S. 324. Duty of state auditor when he believes the value of an estate has been fraudulently or erroneously determined.** Within two years after the entry of an order or decree of a probate judge determining the value of an estate and assessing the tax thereon, the state auditor may, if he believe that such appraisal, assessment or determination has been fraudulently, collusively or erroneously made, make application to the circuit judge of the judicial circuit in which the former owner of such estate resided for a reappraisal thereof. The judge to whom such application is made may thereupon appoint a competent person to reappraise such estate. Such appraiser shall possess the powers, be subject to the duties and receive the compensation provided by sections 322 and 323 of this article. Such compensation shall be payable by the county collector of revenue out of any funds he may have on account of any tax imposed under the provisions of this article, upon the certificate of the judge appointing him. The report of such appraiser shall be filed with the judge by whom he was appointed, and thereafter the same proceedings shall be taken and had by and before such judge as are herein provided to be taken and had by and before the judge of the probate court. The determination and assessment of such judge of the circuit court shall supersede the determination of the probate judge, and shall be filed by such circuit judge in the office of the state auditor.

**S. 325. Appraiser taking any fee or reward from executors, etc., guilty of misdemeanor.** Any appraiser appointed by virtue of this article who shall take any fee or reward from any executor, administrator, trustee, legatee, next of kin or heir of any decedent, or from any other person liable to pay said tax, or any portion thereof, shall be guilty of a misdemeanor, and upon conviction in any court having jurisdiction of misdemeanor, he shall be fined not less than

two hundred and fifty dollars nor more than five hundred dollars, and imprisoned not exceeding ninety days, and in addition thereto the probate judge shall dismiss him from such service and he shall be disqualified from serving hereafter as an appraiser.

**S. 326. Probate court given jurisdiction to hear all questions arising as to tax, duty of prosecuting attorney and attorney general, etc.** The court of probate, having either principal or auxiliary jurisdiction of the settlement of the estate of the decedent, shall have jurisdiction to hear and determine all questions in relation to said tax that may arise, affecting any devise, legacy or inheritance under this article, subject to appeal as in other cases, and the prosecuting attorney of the proper county shall represent the interests of the state in any such proceedings: *Provided*, that in any such proceedings carried on appeal to either of the courts of appeal or the supreme court the attorney general shall represent the interest of the state.

**S. 327. State auditor to furnish books and forms for reports to probate judge, entries, etc.** The state auditor shall furnish to each probate judge a book, which shall be a public record, and in which he shall enter the name of every decedent upon whose estate an application to him has been made for the issue of letters of administration or letters testamentary, the date and place of death of such decedent, the estimated value of his real and personal property, the names, places, residences and relationship to him of his heirs-at-law, the names and places of residence of the legatees and devisees in any will of any such decedent, the amount of each legacy and the estimated value of any real property devised therein, and to whom devised. These entries shall be made from the data contained in the papers filed on any such application, or in any proceeding relating to the estate of decedent. The probate judge shall also enter in such book the amount of the personal property of any decedent, as shown by the inventory thereof when made and filed in his office, and the returns made by any appraiser appointed by him under this article, and the value of annuities, life estates, terms of years and other property of any such decedent or given by him in his will or otherwise, as fixed by the probate judge, and the tax assessed thereon, and the amount of any receipts for payment of any tax on the estate of such decedent under this article filed with him. The state auditor shall also furnish to each probate judge forms for the reports to be made by such probate judge, which shall correspond with the entries to be made in such book.

**S. 328. Probate judge shall make reports to county collector and state auditor, when.** Each probate judge shall, on January, April, July and October first of each year, make a report in duplicate, upon the forms furnished by the state auditor, containing all the data and matters required to be entered in the book aforesaid, one of which shall be immediately delivered to the county collector of revenue and the other transmitted to the state auditor. The recorder of each county shall at the same times make reports in duplicates, containing a statement of any deed or other conveyance filed or recorded in his office of any property, which appears to have been made or intended to take effect in possession or enjoyment after the death of the grantor or vendor, the name and place of residence of such grantor or vendor, the name and place of residence of the grantee or vendee, and a description of the property transferred, one of which duplicate shall be immediately delivered to the county collector of revenue and the other transmitted to the state auditor.

**S. 329. Necessary proceedings to cite persons to appear before probate court to show cause why tax should not be paid, duty of collector and prosecuting attorney.** If the collector of revenue of any county shall have reason to believe that any tax is due and unpaid under this article, after the refusal or neglect of the persons liable therefor to pay the same, he shall notify the prosecuting attorney of the county, in writing, of such failure or neglect, and such prosecuting attorney, if he have probable cause to believe that such tax is due and unpaid, shall apply to the probate court for a citation, citing the persons liable to pay such tax to appear before the court on the day specified, not more than three months after the date of such citation, and show cause why the tax should not be paid. The probate judge, upon such application, and whenever it shall appear to him that any such tax accruing under this article has not been paid, as required by law, shall issue such citation, and the service of such citation, and the hearing and determination thereon and the enforcement of the determination or decree made by the probate judge and the fees and costs in such cases shall be the same as those now provided, or which may hereafter be provided, in cases in the probate courts of this state, and the probate judge shall allow as costs in the said case such fees to said prosecuting attorney as he may deem reasonable. Whenever the probate judge shall certify that there was probable cause for issuing a citation and taking the proceedings specified in this section, the state auditor shall credit the collector of the county with all expenses incurred for the service of citations and other lawful disbursements. In proceedings to which any county collector is cited as a party under section 322 of this article, the state auditor is authorized, in his discretion, to designate and retain counsel to represent such county collector therein, and to direct such county collector to pay the expenses thereby incurred out of the funds which may be in his hands on account of this tax.

**S. 330. Collector shall issue receipt under official seal to any person upon payment of twenty-five cents, showing real estate upon which tax is paid, etc.** Any person shall, upon payment of the sum of twenty-five cents, be entitled to a receipt from the county collector of any county, or at his option, to a copy of a receipt that may have been given by such collector for the payment of any tax under this article, under the official seal of said collector, which receipt shall designate on what real property, if any, of which any decedent may have died seized, such tax shall have been paid, by whom paid, and whether in full of said tax, and said receipt may be recorded in the recorder's office in which said property is situate, in a book to be kept by said recorder for such purpose, which shall be labeled "inheritance tax."

**S. 331. Collector entitled to certain per centum, in addition to other fees.** The collector of each county shall be allowed to retain, on all taxes paid and accounted for by him in each year, under this article, in addition to his salary or fees now allowed by law, five per centum on the first twenty thousand dollars so paid and accounted for by him, and three per centum on all additional sums so paid and accounted for by him: *Provided* that said collector shall, every three months, pay one-half of all the sums so retained by him, during such period, to the probate judge of the said county for the use of said probate judge and to defray the clerical expense arising in the office of said probate judge in connection with proceedings under this article.

## MONTANA.

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### In General.

Montana's inheritance tax was adopted in 1897. The exemptions apply to the estate as a whole, not to the individual shares.

Montana is not taxing stock of Montana corporations owned by non-residents, though the statute contains a provision holding the corporation responsible for the tax if it transfers stock with actual or constructive knowledge that it is subject to the tax. It is therefore rather surprising to find that Montana taxes stock of non-residents in foreign corporations which own property in Montana. It is not the practice to require an inventory of a non-resident's estate.

The act contains a curious provision for including in the valuation for the purpose of the tax the "increase" of property of the estate up to the time of final distribution. This should have the effect of hastening the settlement of estates as far as possible.

### Constitutional Limitations.

#### Montana Constitution 1889, a. 12.

S. 1. The necessary revenue for the support and maintenance of the state shall be provided by the legislative assembly, which shall levy a uniform rate of assessment and taxation, and shall prescribe such regulations as shall secure a just valuation for taxation of all property, except that specially provided for in this article. The legislative assembly may also impose a license tax, both upon persons and upon corporations doing business in the state.

#### Montana Constitution 1889, a. 12.

S. 11. Taxes shall be levied and collected by general laws and for public purposes only. They shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax.

### List of Statutes.

1897. Statutes of Montana, p. 83.

1905. " " " p. 94, c. 46.

1907. Revised Codes, Vol. 2, c. 13, ss. 7724 to 7751.

## THE STATUTE OF 1897.

**The Montana statute is modeled** after the New York statute of 1885. *State v. District Court*, 41 Mont. 357, 109 P. 438, 442.

**Mont. St. 1897, p. 83.** Approved March 4, 1897.

AN ACT TO ESTABLISH A TAX ON DIRECT AND COLLATERAL INHERITANCES, BEQUESTS AND DEVISES to provide for its collection and direct the disposition of its proceeds.

S. 1. After the passage of this act, all property which shall pass by will or by the intestate laws of this state, from any person who may die, seized or possessed of the same, while a resident of this state, or if such decedent was not a resident of this state, at the time of his death, which property, or any part thereof, shall be within this state, or any interest therein or income therefrom, which shall be transferred by deed, grant, sale or gift made in contemplation of the death of the grantor or bargainor, or intended to take effect in possession or enjoyment after such death to any person or persons, or to any body politic corporate, in trust or otherwise, or any property, which shall be in this state or the proceeds of all property outside of this state, which may come into this state, and which may be or should be distributed in this state to any such heirs, devisees or legatees, by reason whereof any person or corporation shall become beneficially entitled in possession or expectancy, to any such property, or to the income thereof, other than to or for the use of his or her father, mother, husband, wife, lawful issue, brother, sister, the wife or widow of the son, or the husband of a daughter, or any child or children adopted as such in conformity with the laws of the state of Montana, and any lineal descendant of such decedent born in lawful wedlock, shall be and is subject to a tax of five dollars on every hundred dollars of the market value of such property, and at a proportionate rate for any less amount, to be paid to the treasurer of the proper county hereinafter defined for the use of said county and state in the proportions hereafter stated; and all administrators, executors and trustees shall be liable for any and all such taxes until the same have been paid as hereinafter directed. When the beneficial interests to any personal property or income therefrom shall pass to or for the use of any father, mother, husband, wife, child, brother, sister, wife or widow of the son, or the husband of a daughter, or any child or children adopted as such in conformity with the laws of the state of Montana, or to any person to whom the deceased, for not less than ten years prior to death, stood in mutually acknowledged relation of a parent, or to any lineal descendant born in lawful wedlock; in every such case the rate of tax shall be one dollar on every hundred dollars of the clear market value of such property, and at and after the same rate for every less amount, provided, that an estate which may be valued at a less sum than seventy-five hundred dollars shall not be subject to any such tax or duty. In all other cases the rate shall be five dollars on each and every hundred dollars of the clear market value of all property and at the same rate for any amount, provided, that an estate which may be valued at a less sum than five hundred dollars shall not be subject to any such duties or tax, provided, further, that said tax shall be levied and collected upon the increase of all property, arising between the date of death and the date of the decree of distribution, and upon all estates which have been probated before, and shall be distributed after the passage and taking effect of this act.



### Nature of Tax.

This act is not a property tax but is a tax on the right of succession, although the statute expressly says that "all property" shall be subject to a tax. The court relies upon *State v. Hamlin*, 86 Me. 495, 30 A. 76, 41 Am. St. Rep. 569, 25 L. R. A. 632, and on *State v. Ferris*, 53 Ohio St. 314, 41 N. E. 579, where the statutes also on their face were upon the "property." *Gelsthorpe v. Furnell*, 20 Mont. 299, 51 P. 267, 268, 39 L. R. A. 170.

Mont. Const., a. 12, s. 3, provides that mines and mining claims shall be taxed at the price paid the United States therefor. But the court holds that the inheritance tax is not a tax upon the property itself, but an impost or excise, and is therefore not obnoxious to this provision of the constitution even where the estate consists in large part of mines or mining claims. *In re Tuohy*, 35 Mont. 431, 90 P. 170, 172.

### Right to Receive Property is Taxed.

The most exact rule is that which regards the inheritance tax as upon the right to receive property rather than the right to dispose of it. The court relies upon *State v. Ferris*, 53 Ohio St. 314, 41 N. E. 579, and *State v. Alston*, 94 Tenn. 674, 30 S. W. 750. "In view of the authorities cited, it must be conceded that the general assembly has the power to pass an inheritance tax for purposes of general revenue, unless prohibited by the constitution of our state. Properly understood, it is not the right to transmit, but the right and privilege to receive, that is taxed. The right to dispose of property during the lifetime of the owner cannot be separated from the property itself, and therefore to tax the right of disposal by contract in the lifetime of the owner, even though it take effect at his death, is to tax the property itself. But the right to dispose of the property by will or descent, taking effect after the death of the owner, is not so closely connected with the right of property, and it is not clear that such right may not be taxed. But, when the right to receive the property is considered, it is clear that the right is distinct and separate from the property itself, and the state may tax this right to receive property; and this is so whether the property is disposed of by the owner during his lifetime, or at his death. This right to receive property is under the control of the legislature, and it has the power to regulate and lay such burdens thereon as it may see fit, within the provisions of the constitution. To regulate by taxation or otherwise

the privilege or right to receive property is not in conflict with the first section of the bill of rights, which recognizes the inalienable right of acquiring, possessing and protecting property. Were it otherwise, all our laws as to wills, descent, distribution and conveyances would be unconstitutional." *Per* Burkett, J., in *State v. Ferris*, 53 Ohio St. 314, 41 N. E. 579. *Gelsthorpe v. Furnell*, 20 Mont. 299, 51 P. 267, 39 L. R. A. 170.

### **Measure by Valuation of Property Upheld.**

"In nearly all inheritance tax laws the statutes provide for the appraising of property to be inherited, but the object of such valuation is not to tax the property itself. It is to arrive at a measure of price by which the privilege of inheriting can be valued." *Per* Hunt, J., in *Gelsthorpe v. Furnell*, 20 Mont. 299, 51 P. 267, 39 L. R. A. 170.

### **Exemptions Upheld.**

This statute exempts successions valued at a less sum than seven thousand five hundred dollars and the court holds that this exemption does not make the statute void as wanting in uniformity. The legislature is not prevented by the constitution from the exercise of discretion as to what classes of rights or privileges it may enumerate as subject to taxation, provided the tax imposed is uniform in its application to all rights and privileges within the class defined. *Gelsthorpe v. Furnell*, 20 Mont. 299, 51 P. 267, 39 L. R. A. 170.

### **Real Estate.**

The statute provides that the rate except to direct descendants and the husband and wife of the decedent shall be five per cent and that when the beneficial interest of any personal property passes to a direct descendant the rate shall be one per cent. Real estate passing under a will to the widow of testator is not subject to tax. *Hinds v. Wilcox*, 22 Mont. 4, 55 P. 355.

### **"Tax shall be Levied and Collected upon the Increase of all Property."**

The argument was made that the words "increase of all property" included only those estates the property of which is of such a character that it increases in kind, as for instance when it consists in whole or in part of live stock, such as sheep, cattle, etc. But the

court holds that following the common acceptance of the word "increase" an increase means increase in value as well as increase in kind. The court upholds the method pursued by the lower court which appointed an appraiser to ascertain the value of the estate for the purpose of enabling it to fix the amount of inheritance tax to be paid by the executor prior to the final distribution among its devisees. *In re Tuhy*, 35 Mont. 674, 90 P. 170.

### How to Attack Assessment.

The Montana Revised Code, section 7724, is attacked by certiorari and the court does not take up the question whether certiorari or prohibition is the proper remedy to review an order of the district court laying an inheritance tax. *State v. District Court*, 41 Mont. 357, 109 P. 438, 442.

S. 2. When any grant, gift, legacy or succession upon which a tax is imposed by section 1, of this act, shall be an estate, income or interest for a term of years, or for life, or determinable upon any future or contingent event, or shall be a remainder, or reversion or other expectancy, real or personal, the entire property or fund by which such estate, income or interest is supported, or which is a part, shall be appraised immediately after death of the deceased, and the market value thereof determined, in the manner provided in section 15 of this act, and the tax prescribed by this act shall be immediately due and payable to the treasurer of the proper county, and, together with the interest thereon, shall be and remain a lien on said property until the same is paid; provided, that the person or persons, or body politic or corporate, beneficially interested in the property chargeable with said tax, may elect not to pay the same until they shall come into the actual possession or enjoyment of such property, and in that case, such person or persons or body politic or corporate shall execute a bond to the state of Montana in a penalty of twice the amount of tax, including interest at ten per cent per annum, arising upon the personal estate, with such sureties as the clerk of the district court of the proper county may approve, conditioned for the payment of said tax, and interest thereon, at such time or period as they or their representatives may come into the actual possession or enjoyment of such property, which bond shall be filed in the office of the clerk of the district court of the proper county; provided further, that such person or corporation shall make a full and verified return of such property to said court, and file the same in the office of the clerk of the district court for said county and a duplicate thereof in the office of the clerk and recorder of said county within one year from the death of the deceased, and within that period enter into such security and bond, and renew the same every three years.

S 28. This act shall apply to all estates remaining undistributed at the time this law shall take effect, and the tax shall be determined and collected as in other cases, and it shall take effect and be in force from and after its passage and approval by the governor.

**Retroactive Feature Upheld.**

This act applies to estates which have been probated before its passage and are to be distributed after it takes effect. Testamentary dispositions under Montana statutes are presumed to vest at the testator's death and the rights of heirs and legatees to take and receive their shares are vested immediately upon the death of the testator, as the right to a distributive share in an estate vests directly upon the death of the intestate. This right is valuable and may be sold or mortgaged and no law can be so changed as to deprive the owner of it and bestow it upon another without his consent; but on the other hand a vested right is held subject to the laws for the enforcement of public duties. Therefore, a right to take a legacy may be subject to the laws for the assessment and collection of a tax as a premium upon the right and privilege to receive the inheritance, as much as it is subject to laws which authorize the taxation of the very property bequeathed. *Gelsthorpe v. Furnell*, 20 Mont. 299, 51 P. 267, 270, 39 L. R. A. 170. The court relies upon *In re McPherson*, 104 N. Y. 306, 10 N. E. 685.

Sections 3 to 26 provide for the assessment and collection of the tax.

Mont. St. 1905, c. 46, amends Mont. St. 1897, p. 83, s. 20, by striking out the provision making it a misdemeanor for any county attorney or his partner or any one connected with him by blood or marriage to act as attorney for any person liable under the act.

**THE PRESENT ACT.****Montana Revised Codes of 1907.**

**S. 7724. Inheritance tax, Property subject to.** After the passage of this act, all property which shall pass by will or by the intestate laws of this state, from any person who may die, seized or possessed of the same, while a resident of this state, or if such decedent was not a resident of this state, at the time of his death, which property or any part thereof, shall be within this state, or any interest therein or income therefrom, which shall be transferred by deed, grant, sale or gift made in contemplation of the death of the grantor or bargainor, or intended to take effect in possession or enjoyment after such death to any person or persons, or to any body politic corporate, in trust or otherwise, or any property, which shall be in this state or the proceeds of all property outside of this state, which may come into this state, and which may be or should be distributed in this state to any such heirs, devisees or legatees, by reason whereof any person or corporation shall become beneficially entitled in possession or expectancy, to any such property, or to the income thereof, other than to or for the use of his or her lawful issue, brother, sister, the wife or widow of the son, or the husband of a daughter, or any child or children adopted as such in conformity with the laws

of the state of Montana, and any lineal descendant of such decedent born in lawful wedlock, shall be and is subject to a tax of five dollars on every hundred dollars of the market value of such property, and at a proportionate rate for any less amount, to be paid to the treasurer of the proper county hereinafter defined for the use of said county and state in the proportions hereafter stated; and all administrators, executors, and trustees shall be liable for any and all such taxes until the same have been paid as hereinafter directed. When the beneficial interests to any personal property or income therefrom shall pass to or for the use of any father, mother, husband, wife, child, brother, sister, wife or widow of the son, or the husband of a daughter, or any child or children adopted as such in conformity with the laws of the state of Montana, or to any person to whom the deceased, for not less than ten years prior to death, stood in mutually acknowledged relation of a parent, or to any lineal descendant born in lawful wedlock; in every such case the rate of tax shall be one dollar on every hundred dollars of the clear market value of such property, and at and after the same rate for every less amount, provided, that an estate which may be valued at a less sum than seventy-five hundred dollars shall not be subject to any such tax or duty. In all other cases the rate shall be five dollars on each and every hundred dollars of the clear market value of all property and at the same rate for any amount, provided, that an estate which may be valued at a less sum than five hundred dollars shall not be subject to any such duties or tax, provided, further, that said tax shall be levied and collected upon the increase of all property arising between the date of death and the date of the decree of distribution, and upon all estates which have been probated before, and shall be distributed after the passage and taking effect of this act.

[See notes to the Act of 1897, *ante*, p. 681.]

[It seems to have been intended to exempt from taxation real estate passing to direct heirs. The language of the statute is very much confused, and as it reads, real estate passing to lawful issue, brother, sister, wife or widow of son, husband of daughter, adopted child and lineal descendant of adopted child is not taxed; but real estate passing to father, mother, husband or wife is taxed 5%.—*Ed.*]

### **Power over Estate of Non-Resident.**

The testator died domiciled in Ireland owning real estate in Montana. It was claimed by the petitioners that the inheritance tax is imposed not upon the property but upon the right or privilege to take, and that the court must therefore have jurisdiction not only of the distribution but also of the distributees, in order to levy the tax; and that since neither of these essentials exists there can be no lawful levy of the tax in this case. But the court says that the delivery provided by section 7675 serves all the purposes of distribution and the power to direct the delivery is tantamount to the power to order distribution directly to the persons entitled to take. *State v. District Court*, 41 Mont. 357, 109 P. 438, 441.

**Rates. — Exemptions.**

Mont. Revised Code, section 7724, provided that an estate which may be valued at a less sum than five hundred dollars shall not be subject to any such duty or tax. Where an estate is of value in excess of five hundred dollars and all the legatees must be paid in money, none of the exemptions apply; hence the whole of the estate is subject to the tax. It may be that when the time comes to fix the amount to be paid, a part of it will have to be fixed at one rate and part of it at another, according as the relationship of the testator to the legatees is made to appear. Such a proportion of the amount as will go to a favored class, if any of the legatees fall within that class, will be subject to a tax at the lower rate and the rest at the higher rate, but these proportions will be easily ascertainable when the facts appear. Payment of the tax is in no wise dependent upon the distribution of the estate or upon the amount of the specific legacies or distributive shares. It is due and payable upon the value of the estate at the death of the decedent. Therefore, while under the requirements contained in the Mont. Revised Code, section 7675, the power to order distribution according to the terms of the will may be assumed to have been taken from the state court and it must, when an estate is ready for distribution, order its delivery to the executor or administrator having charge of the administration, this does not relieve the estate from the burden of the tax, nor impair the power of the court to collect it. *State v. District Court*, 41 Mont. 357, 109 P. 438, 440.

S. 7725. **Appraisement of contingent or determinable estates.** When any grant, gift, legacy or succession upon which a tax is imposed by section 7724 (1) of this act, shall be an estate, income or interest for a term of years, or for life, or determinable upon any future or contingent event, or shall be a remainder, or reversion or other expectancy, real or personal, the entire property or fund by which such estate, income or interest is supported, or which is a part, shall be appraised immediately after death of the deceased, and the market value thereof determined, in the manner provided in section 7738 (15) of this act, and the tax prescribed by this act shall be immediately due and payable to the treasurer of the proper county, and, together with the interest thereon, shall be and remain a lien on said property until the same is paid; provided, that the person or persons, or body politic or corporate, beneficially interested in the property chargeable, with said tax, may elect not to pay the same until they shall come into the actual possession or enjoyment of such property, and in that case, such person or persons or body politic or corporate shall execute a bond to the state of Montana in a penalty of twice the amount of tax, including interest at ten per cent, per annum, arising upon the personal estate, with such sureties as the clerk of the district court of the proper county may approve, conditioned for the payment of said tax, and interest thereon, at such time or period as they or

their representatives may come into the actual possession or enjoyment of such property, which bond shall be filed in the office of the clerk of the district court of the proper county; provided further, that such person or corporation shall make a full and verified return of such property to said court, and file the same in the office of the clerk of the district court for said county and a duplicate thereof in the office of the clerk and recorder of said county within one year from the death of the deceased, and within that period enter into such security and bond, and renew the same every three years

**7726. Devise or bequest to executor in lieu of fees.** Whenever a decedent appoints or names one or more executors or trustees, and makes a bequest or devise of property to them in view of commissions or allowances, which otherwise would be liable to said tax or appoints them his residuary legatees, and said bequests, devises or residuary legacies exceed what would be a reasonable compensation for their services, such excess shall be liable to said tax; and the district court in which the probate proceedings are pending shall fix the compensation.

**7727. When tax due. — Interest.** All taxes imposed by this act, unless otherwise herein provided for, shall be due and payable at the death of the decedent and if the same are paid within ten months, no interest shall be charged and collected thereon, but if not so paid, interest at the rate of ten per centum per annum shall be charged and collected from the time said tax accrues; provided, that if said tax is paid within six months from the accruing thereof a discount of three per centum shall be allowed and deducted from said tax. And in all cases where the executors, administrators or trustees do not pay such tax within ten months from the death of the decedent, they shall be required to give bond in the form and to the effect prescribed in section 7725 (2) of this act for the payment of said tax with interest.

**7728. Penalty for non-payment.** The penalty of ten per centum imposed by section 7727 (4) hereof for non-payment of said tax thereof, shall not be charged in where, by reason of claims made upon the estate, necessary litigation or other unavoidable causes of delay, the estate of any decedent or a part thereof cannot be settled at the end of eighteen months from the death of the decedent; and in such cases only seven per centum shall be charged upon said tax from the expiration of said eighteen months until the cause of delay is removed.

**7729. Duty of executor to deduct tax from legacy.** Any administrator, executor or trustee having in charge or trust, any legacy, or property for distribution subject to said tax, shall deduct the tax therefrom, or if the legacy or property be not money, he shall collect the tax thereon upon the market value thereof, from the legatee or person entitled to such property, and he shall not deliver, or be compelled to deliver, any specific legacy or property subject to tax to any person until he shall have collected the tax thereon, and whenever any such legacy shall be charged upon or payable out of the real estate, the executor, administrator, or trustee shall collect said tax therefrom, and the same shall remain a charge on such real estate until paid; if, however, such legacy be given in money, to any person for a limited period, the executor, administrator or trustee shall retain the tax on the whole amount. But if it be not in money, he shall make application to the district court of the proper county to make an apportionment,

if the case require it, of the same to be paid into his hands by such legatee or legatees and for such other order relative thereto as the case may require.

### **Appraisal.**

Under Montana Code, sections 7725, 7727, there is an implication that the measure for computing the amount of a tax is the value of the estate as it is made to appear by appraisement of it in the ordinary way. These sections are not exclusive but section 7729 is an additional provision intended to apply also in any case and at any time, when in the opinion of the court the circumstances require an appraisement to be made; for appraisement may be had "as often as and whenever occasion may require." Section 7729 was intended to apply where the payment was delayed, as in case of future uncertain interests, and it is impossible to appraise at once. *State v. District Court*, 41 Mont. 357, 109 P. 438.

**7730. Power of executor to sell property to pay tax.** All executors, administrators and trustees shall have full power to sell so much of the property of the decedent as shall enable them to pay said tax in the same manner as they may be enabled by law to do for the payment of debts of the estate, and the amount of said tax shall be paid as hereinafter directed.

**7731. Payment to county treasurer and receipts.** Every sum of money retained by an executor, administrator, or trustee, or paid into his hands, for any tax on property shall be paid by him within ten days thereafter to the treasurer of the county in which the probate proceedings are pending, and the said treasurer shall give, and every executor, administrator or trustee shall take duplicate receipt for such payment, one of which said receipts said executor, administrator, or trustee shall immediately send to the treasurer of the state whose duty it shall be to charge the County Treasurer so receiving the tax with the amount thereof due the state and said state treasurer shall seal said receipt with the seal of his office, if he have one, and countersign the same, and return it to the executor, administrator, or trustee, whereupon it shall be a proper voucher in the settlement of his accounts; and an executor, administrator, or trustee shall not be entitled to credits in his accounts, nor be discharged from liability for such tax, nor shall said estate be distributed unless he shall produce a receipt so sealed and countersigned by the state treasurer or a copy thereof certified by him.

**7732. Liability of executor's bond.** The bond of an executor or administrator shall be liable for all moneys he may receive under this article of taxes, or for proceeds of sale of real estate received by him thereunder, or pursuant thereto.

**7733. Proceedings upon failure of executor to pay tax.** If any executor or administrator or trustee shall fail to perform the duties imposed upon him by this article the district court upon petition of the county treasurer, or any person interested in said estate may revoke his administration and his bond shall be liable, and the same proceedings shall be had against him as if his administration had been revoked for any other cause.



**7734. Administrators de bonis non.** The power and duty of an administrator *de bonis non*, or with the will annexed, or the public administrator shall be the same under this article as those of an executor or administrator, and he shall be subject to the same duties and liabilities

**7735. Reduction of tax upon refund to pay debts.** Whenever any debts shall be proven against the estate of the deceased, after the payment of legacies or distribution of property from which the said tax has been deducted or upon which it has been paid, and a refund is made by the legatee, devisee, heir, or next of kin, a proportion of the tax so deducted or paid shall be repaid to him by the executor, administrator or trustee if the said tax has not been paid to the county treasurer or state treasurer, or by them, in the proper proportionate shares, if it has been so paid.

**7736. Refund of erroneous collection.** When any amount of said tax shall have been paid erroneously to the county and state treasurer, or to either of them, it shall be lawful for them, on satisfactory proof rendered to the clerk of the district court, in the case of the county treasurer, and to the state auditor in the case of the state treasurer, of such erroneous payment, to refund and pay to the executor, administrator, person or persons who have paid any such tax in error, the county's and state's proportionate amount of such tax so paid provided that all such applications for repayment of such tax shall be made within two years from the date of such payment.

**7737. Foreign executors. Tax on stocks or loans.** Whenever any foreign executor or administrator shall assign or transfer any stocks or loans in this state, standing in the name of the decedent, or held in trust for a decedent, which shall be liable to the said tax, such tax shall be paid to the treasurer of the proper county on the transfer thereof; otherwise, the corporation permitting such transfer shall become liable to pay such tax; provided that such corporation had actual or constructive knowledge before such transfer that said stocks or loans are liable to said tax.

**7738. Appraisement of estate.** When the value of an inheritance, devise, bequest, or other interest subject to the payment of said tax, is uncertain, the district court in which the probate proceedings are pending, or the judge thereof on his own motion, or on the application of any interested party shall appoint some competent person as appraiser, as often as, and whenever occasion may require, whose duty it shall be forthwith to give such notice, by registered mail, to all persons known to have or claim any interest in such property, and to such persons as the court may direct, of the time and place at which he will appraise such property, and at such time and place to appraise the same, and to make the report thereof, in writing, to said court, together with such other facts in relation thereto, as said court may by order require, to be filed with the clerk of such court; and from this report the said court, shall by order, forthwith assess and fix the market value of all inheritances, devises, bequests or other interests, and the tax to which the same is liable, and shall immediately cause notice thereof to be given, by registered mail, to all persons known to be interested therein; and the value of every future or contingent, or limited estate, income, or interest, shall for the purpose of this act, be determined by the rule, method and standards of mortality, and of

values that are set forth in the actuaries' combined experience tables of mortality for ascertaining the values of policies of life insurance and annuities, and for the determination of the liabilities of life insurance companies, save that the rate of interest be assessed in computing the present value of all future interest and contingencies shall be at seven per cent, per annum; and the value of such future, or contingent, or limited estate, income, or interest, shall be determined in the usual manner upon the facts contained in such report, and shall be certified to the court, which said certificate shall be made by some one known to the court to be familiar with the method of procedure by companies, and his certificate, verified by oath, shall be *prima facie* evidence that the method of computation adopted therein is correct. The said appraiser shall be paid by the county treasurer out of any funds that he may have in his hands on account of said tax, and the certificate of the court, at the rate of five dollars per day for every day actually and necessarily employed in said appraisement, together with the actual and necessary traveling expenses, a sworn statement of which must be filed with the clerk of the district court in which the probate proceedings are pending. The person designated by the court or judge thereof, to make the computations, in this section required, shall receive such compensation as the court or judge thereof shall deem reasonable and just.

### **Notice of Appraisal.**

This section gives sufficient notice to satisfy the constitution of the appraisal and assessment of the tax. The clause provides for notice "by registered mail" and the provision lays upon the court the duty to fix the time for the appraisement within such reasonable limits as will give every person interested the opportunity to be present and have a hearing if he so desires. This may be difficult, as where, in the case at bar, the testator died in Ireland, where he resided, but the task is no more difficult for the court in Montana than for the court in Ireland.

The statute further provides that after the tax has been assessed the court shall immediately give notice by registered mail, and this is an additional notice which requires knowledge by the court of the names and whereabouts of all interested persons, and this knowledge it is presumed the court will get. The Montana statute (Revised Code, section 7724, *et seq.*) is modeled after the New York statute of 1885 and the provisions contained in it for the giving of notice are substantially identical with those contained in the Montana statute. They were examined by the New York court in the *Matter of McPherson*, 104 N. Y. 306, 10 N. E. 685; *State v. District Court*, 41 Mont. 357, 109 P. 438, 442.

**7739. Misconduct of appraiser.** Any appraiser, appointed by virtue of this act, who shall take any fee or reward from an executor, administrator, trustee, legatee, next of kin, or heir of any decedent or from any other person liable to pay said tax, or his or their attorney, or any other person, or any portion thereof,

shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than one hundred dollars nor more than five hundred dollars, or imprisonment in the county jail ninety days, or both such fine and imprisonment, and in addition thereto, the court shall dismiss him from such service. The district courts shall have concurrent jurisdiction with the justices of the peace courts for all violations of the law mentioned in this section.

**7740. Jurisdiction of courts.** The district court of the county in which is situate the real property of the decedent, who was not a resident of this state, or in the county in which the decedent was a resident at the time of his death, shall have jurisdiction to hear and determine all questions in relation to the tax arising under the provisions of this act, and the court first acquiring jurisdiction hereunder shall retain the same to the exclusion of every other.

**7741. Citation to compel payment.** If it shall appear to the district court, or judge thereof, that any tax accruing under this act, has not been paid according to law, the court or judge shall issue a citation, citing the person known to own any interest or part of the property liable to the tax to appear before the court on a day certain, not more than ten weeks from the date of said citation, and show cause why said tax should not be paid. The service of such citation and the time, manner, and proof thereof, and the hearing and determination thereof, and the enforcement of the determination or decree shall conform to the provisions of chapter 12, of title 12 of the Code of Civil Procedure; and the clerk of the court, shall upon the request of the county attorney or county treasurer furnish without fee, one or more transcripts of such decree, and the same shall be docketed and filed in the office of the county clerk and recorder of any county in the state, and in the office of the clerk of the district court of any county in the state, in the same manner and with the same effect as provided by section 6807 (1197) of the said Code of Civil Procedure for filing transcript of judgment, or of an original docket.

**7742. Proceedings upon failure to administer estates.** In all cases where any estate, real, personal or mixed, shall be subject to the direct or collateral inheritance tax imposed by this act, and no administration is taken on the estate of the person who died seized and possessed thereof, within ninety days after the death of said person, the clerk of the district court of the county in which administration should be granted, or taken out, shall issue a citation for the parties entitled to administration, to show cause wherefore they do not administer; provided, however, that when any real estate shall be subject to said tax and no administration has been taken out on the estate of the person who died seized thereof, the district court of the county where said real estate shall be situate, may on the application of any one interested in said real estate, or of the county or state treasurer appoint an appraiser to value the same, as provided in this act, and the amount of the tax which may be found due on said property shall be paid to the county treasurer and disposed of the same as other taxes provided for in this act.

**7743. Collection by suit.** Whenever the treasurer of any county shall have reason to believe that any tax is due and unpaid under this act, after the refusal or neglect of the persons interested in the property liable to said tax, to pay the

same, he shall notify the county attorney of the proper county, in writing, of such failure to pay such tax, and the county attorney so notified, if there is a probable cause to believe a tax is due and unpaid, shall prosecute the proceedings in the district court of the proper county, as provided in sections 7741 (18) and 7742 (19) of this act, for the enforcement and collection of such tax.

**7744. Clerk's quarterly statement.** The clerk of the district court shall, every three months, make a statement in writing, to the county treasurer, of the property from which, or the party from which, he has reason to believe, or knows, a tax under this act, is due and unpaid.

**7745. Costs of collection.** Whenever the district court of any county or the judge thereof shall certify that there is probable cause for issuing a citation, and taking the proceedings specified in section 7741 (18) of this act, to the state auditor, the state auditor shall allow said claim, and shall draw his warrant on the state treasurer in favor of the county treasurer of the county wherein said proceedings were taken or had for all expenses incurred for services of said citation, and his other lawful expenses that have not otherwise been paid; provided that if it shall appear to the district court that the party to whom the citation is issued was wilfully endeavoring to evade the terms and provisions of this act, and the payment of the tax hereunder, the costs of said proceeding shall be taxed to him and execution shall issue therefor in the same manner as on judgments in the district court.

**7746. Record of clerk of court.** The clerk of the district court of each county shall keep a book in which he shall enter the value of inheritances, devises, bequests and other interests subject to the payment of said tax, and the tax, assessed thereon, and the amounts of any receipts for the payments thereon filed with him, which book shall be kept by him as public records.

**7747. County treasurer. Annual report.** The treasurer of each county shall collect all taxes that may be due and payable under this act, and he shall pay to the state sixty per cent thereof, and the state treasurer shall give him a receipt therefor. The county treasurer shall make a report under oath to the state auditor between the first and fifteenth days of December of each year of said tax so paid, stating for what estate paid, and in such form and containing such particulars as the auditor may prescribe; and for all such taxes collected by him and not paid to the state treasurer by the first day of June and January of each year he shall be liable upon his official bond.

**7748. Record of receipts.** Any person or body politic or corporate, shall, upon the payment of the sum of fifty cents, be entitled to a receipt from the county treasurer of any county, or a copy of the receipt at his option, that may have been given by said treasurer for the payment of any tax under this act, which said receipt shall be countersigned by the clerk of the district court and the seal of the district court attached thereto, and shall designate on what real property, if any, of which decedent may have died seized, said tax has been paid, and by whom paid, and whether or not it is in full of said tax, and the description of the property upon which said tax is paid; and the said receipt may be recorded in the office of the county clerk and recorder of the county in which

said property is situate, in a book to be kept by said clerk for such purpose, which shall be properly indexed and labeled "District and Collateral Tax."

**7749. Distribution of tax.** Sixty per cent of the taxes levied and collected under this act, shall be paid into the treasurer of this state for the use of the general fund, and forty per cent thereof into the treasurer of the county for the use of the general school fund.

**7750. Inconsistent acts repealed.** All acts and parts of acts inconsistent with the provisions of this act, are hereby repealed, as far as they affect the provisions hereof.

**7751. Estates to which applicable.** This act shall apply to all estates remaining undistributed at the time this law shall take effect, and the tax shall be determined and collected as in other cases, and it shall take effect and be in force from and after its passage, and approval by the governor.

## NEBRASKA.

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### In General.

Nebraska enacted its inheritance tax in 1901. The exemptions apply to each individual share rather than to the estate as a whole, though the language creating the five hundred dollar exemption is ambiguous.

It is a fair construction of the statute that stock in a Nebraska corporation owned by a non-resident is subject to the tax, especially as there is a provision holding the corporation responsible if it transfers stock for a foreign executor before the tax is paid, if it has knowledge that the stock is subject to tax. The tax authorities are not collecting a tax on such stock at present if the certificate is kept outside the state.

The proceeds of the inheritance tax are to be spent for the improvement of county roads.

### Constitutional Limitations.

**Nebraska Constitution 1875, a. 9.**

S. 1. The legislature shall provide such revenue as may be needful, by levying a tax by valuation, so that every person and corporation shall pay a tax in proportion to the value of his, her, or its property and franchises, the value to be ascertained in such manner as the legislature shall direct; and it shall have power to tax peddlers, auctioneers, brokers, hawkers, commission-merchants, showmen, jugglers, inn-keepers, liquor-dealers, toll-bridges, ferries, insurance, telegraph and express interests or business, venders of patents, in such manner as it shall direct by general law, uniform as to the class upon which it operates.

### List of Statutes.

1901, c. 54, p. 414.

1905, c. 117, p. 523.

1907, c. 103, p. 356.

1907, c. 104.

1911, c. 107, p. 386.

Compiled Statutes 1905, ss. 5176 to 5196.

**THE STATUTE OF 1901.**

**Nebraska St. 1901, c. 54, p. 414. Approved April 1, 1901.**

S. 1. All property, real, personal and mixed which shall pass by will or by the intestate laws of this state from any person who may die seized or possessed of the same while a resident of this state, or, if decedent was not a resident of this state at the time of his death, which property or any part thereof shall be within this state, or any interest therein or income therefrom, which shall be transferred by deed, grant, sale or gift made in contemplation of the death of the grantor, or bargainor or intended to take effect, in possession or enjoyment after such death, to any person or persons or to any body politic or corporate, in trust or otherwise, or by reason thereof any person or body corporate shall become beneficially entitled in possession or expectation to any property or income thereof, shall be and is subject to a tax, at the rate hereinafter specified to be paid to the treasurer of the proper county for the use of the state, and all heirs, legatees and devisees, administrators, executors and trustees shall be liable for any and all such taxes until the same shall have been paid as hereinafter directed. When the beneficial interests to any property or income therefrom shall pass to or for the use of any father, mother, husband, wife, child, brother, sister, wife or widow of the son, or husband of the daughter, or any child or children adopted as such in conformity with the laws of the state of Nebraska, or to any person to whom the deceased for not less than ten years prior to death stood in the acknowledged relation of a parent, or to any lineal descendant born in lawful wedlock, in every such case the rate of tax shall be one dollar on every one hundred dollars of the clear market value of such property received by each person, and at the same rate for every less amount; provided, that any estate which may be valued at a less sum than ten thousand dollars shall not be subject to any such duty or the taxes, and the taxes to be levied in the above case only upon the excess of ten thousand dollars received by each person; when the beneficial interests to any property or income therefrom shall pass to or for the use of any uncle, aunt, niece, nephew or other lineal descendant of the same, in every such case the rate of such tax shall be two dollars on every one hundred dollars of the clear market value of such property received by each person on the excess of two thousand dollars so received by each person; In all other cases the rate shall be as follows: on each and every hundred dollars of the clear market value of all property and at the same rate for any less amount, two dollars; on all estates of ten thousand dollars and less, three dollars; on all estates of over ten thousand dollars not exceeding twenty thousand dollars, four dollars; on all estates of over twenty thousand dollars and not exceeding fifty thousand dollars, five dollars; and on all estates over fifty thousand dollars, six dollars; provided that an estate in the above case which may be valued at a sum less than five hundred dollars shall not be subject to any duty or tax.

S. 2 provides for taxation of remainder interests.

S. 3 provides that taxes imposed shall be due and payable at the death of the decedent.

S. 4 covers the assessment and collection of the tax.

## THE AMENDMENTS OF 1905.

Neb. St. 1905, c. 117, s. 1. Approved March 8, 1905.

S. 1. **Sections amended.** That sections 10706, 10711, 10713, 10715 and 10724 respectively of Cobbey's Annotated Statutes for 1903 be amended to read as follows:—

S. 10706. **Inheritance tax. — Rate.** All property, real, personal and mixed which shall pass by will or by the intestate laws of this state from any person who may die seized or possessed of the same while a resident of this state, or, if decedent was not a resident of this state at the time of his death, which property or any part thereof shall be within this state, or any interest therein or income therefrom which shall be transferred by deed, grant, sale or gift made in contemplation of the death of the grantor or bargainor or intended to take effect, in possession or enjoyment after such death, to any person or persons or to any body politic or corporate, in trust or otherwise, or by reason thereof any person or body corporate shall become beneficially entitled in possession or expectation to any property or income thereof, shall be and is subject to a tax at the rate hereafter specified to be paid to the treasurer of the proper county for the use of a permanent road fund as hereinafter provided, and all heirs, legatees, devisees administrators, executors and trustees shall be liable for any and all such taxes until the same shall have been paid as hereafter directed. When the beneficial interest to any property or income therefrom shall pass to or for the use of any father, mother, husband, wife, child, brother, sister, wife or widow of the son, or husband of the daughter, or any child or children adopted as such and conformative with the laws of the state of Nebraska, or to any person to whom the deceased for not less than ten years prior to death stood in the acknowledged relation of a parent, or to any lineal descendant born in lawful wedlock, in every such case the rate of tax shall be one dollar on every one hundred dollars of the clear market value of such property received by each person, and at the same rate for less amount; provided, that any estate which may be valued at a less sum than ten thousand dollars shall not be subject to any such duty or the taxes, and the taxes to be levied in the above case only upon the excess of ten thousand dollars received by each person; when the beneficial interest to any property or income therefrom shall pass to or from the use of any uncle, aunt, niece, nephew, or other lineal descendant of the same, in every such case the rate of such tax shall be two dollars on every one hundred dollars of the clear market value of such property received by each person on the excess of two thousand dollars so received by each person. In all other cases the rate shall be as follows: On each and every one hundred dollars of the clear market value of all property and at the same rate for any less amount, two dollars; on all estates of ten thousand dollars and less, three dollars; on all estates of over ten thousand dollars and not exceeding twenty thousand dollars, four dollars; on all estates of over twenty thousand dollars and not exceeding fifty thousand dollars, five dollars; and on all estates over fifty thousand dollars, six dollars; provided that an estate in the above case which may be valued at a sum less than five hundred dollars shall not be subject to any duty or tax



**Nature of Tax.**

This act is a tax upon the right to succession to property, that is, upon the right to receive the property from the estate of the decedent and not upon the estate itself. *State v. Vinsonhaler*, 74 Neb. 675, 105 N. W. 472.

**Certainty.**

The court does not decide whether some clause or clauses of the act of 1901 as amended in 1905, are void for uncertainty. *State v. Vinsonhaler*, 74 Neb. 675, 105 N. W. 472.

**Tax is on each Beneficiary and is Uniform.**

The act of 1901, as amended in 1905, in that part of the section beginning with the words "in all other cases," in some instances requires the tax to be levied upon the whole estate and it was therefore argued that this is a tax upon property, and not being uniform was therefore unconstitutional. For the purposes of this taxation the estates seem to be classified according to their value, but it does not follow that the tax is placed upon the property constituting the gross estate of the decedent. The tax is placed upon the estate received by each heir or devisee, and its rate is uniform as to its class, and this classification is reasonable and within the province of the legislature. *State v. Vinsonhaler*, 74 Neb. 675, 105 N. W. 472, 474.

**Double Taxation Upheld.**

It was argued that as the beneficiaries had paid one inheritance tax in New York, equity and good conscience dictated that a second burden should not be laid in Nebraska. The court remarks that "the question presented is not one of general equities, but of jurisdiction. It has been held, and logically, that the taxing authorities must be controlled solely by the laws of the state, and not by proceedings in another and distinct jurisdiction, to ascertain whether or not a certain tax should be levied or collected. Payment in one state is not a defence when called upon to pay in the other unless so provided by law. *Mann v. Carter*, 74 N. H. 345, 68 A. 130, 15 L. R. A. (N. S.) 150, *Blackstone v. Miller*, 188 U. S. 189, 206, 207, 23 Sup. Ct. 277, 47 L. Ed. 439." *Per Root, J.*, in *In re Douglas County*, 84 Neb. 506, 121 N. W. 593.

**Stock of Non-Resident Trustee.**

The testator had in 1905 executed a certain trust agreement by which he conveyed all his property by voluntary deed to a trustee, a resident of New York City, who took actual possession of the securities at that time and transferred them to New York, where they did after that remain. The securities have been kept intact and the dividends paid to the testator during his life. The court holds that for the purposes of taxation the shares in the stock of a Nebraska corporation were within the state of Nebraska and therefore subject to the inheritance tax. It further appeared that the deed provided that the settlor reserved the right to limit in his will the terms upon which the beneficiaries might enjoy his bounty and if he did make his will then devolution of the property was subject to the laws of Nebraska and subject to its inheritance tax. *In re Douglas County*, 84 Neb. 506, 121 N. W. 593.

S. 10711. **Same. — Payment. — Time.** Every sum of money retained by any executor, administrator or trustee or paid into his hands for any tax on any property shall be paid by him within thirty days thereafter to the treasurer of the proper county, and the said treasurer or treasurers shall give and every executor, administrator or trustee shall take a receipt from him of said payments. The words "proper county" shall be taken to mean the county in which the property was situated and subject to taxation at the time of the death of the owner.

S. 10713. **Refund of tax.** Whenever debts shall be proved against the estate of the deceased after distribution of legacies from which the inheritance tax had been deducted in compliance with this act, and the legatee is required to refund any portion of the legacy, a proportion of the said tax shall be paid to him by the executor or administrator, if the said tax has not been paid into the county treasury or by the county treasurer if it has been so paid.

S. 10715. When any amount of the said tax shall have been paid erroneously to the county treasurer it shall be lawful for him, on satisfactory proof rendered to him of said erroneous payment, to refund and pay to the executor, administrator or trustee, person or persons who have paid any such tax in error the amount of such tax so paid provided that all applications for the repayment of the said tax shall be made within two years of the date of said payment.

Neb. St. 1906, c. 117, approved March 8, 1901, amended Neb. St. 1901, c. 54, (Cobbey's Annotated Statutes, section 10724), by appropriating the inheritance tax to a permanent road fund.

**AMENDMENTS IN 1907.**

Neb. St. 1907, c. 103, approved April 6, 1907, amends Cobbey's Annotated Statutes, section 10706, to read as printed *post*, p. 712, section 5176 of the present act.

Neb. St. 1907, c. 104, approved March 18, 1907, amends Cobbey's Annotated Statutes, sections 10724, 10716, to read as printed *post*, pp. 714, 716, sections 5186 and 5194 of the present act.

## THE PRESENT ACT.

### Nebraska Compiled Statutes 1905.

**5176 S. 1. Property taxable. — Rate.** All property, real, personal and mixed which shall pass by will or by the intestate laws of this state from any person who may die seized or possessed of the same while a resident of this state, or, if decedent was not a resident of this state at the time of his death, which property or any part thereof shall be within this state, or any interest therein or income therefrom, which shall be transferred by deed, grant, sale or gift made in contemplation of the death of the grantor, or bargainor, or intended to take effect, in possession or enjoyment after such death, to any person or persons or to any body politic or corporate in trust or otherwise, or by reason thereof any person or body corporate shall become beneficially entitled in possession or expectation to any property or income thereof, shall be and is subject to a tax, at the rate hereinafter specified to be paid to the treasurer of the proper county for the use of the state and all heirs, legatees and devisees, administrators, executors and trustees shall be liable for any and all such taxes until the same shall have been paid as hereinafter directed. When the beneficial interests to any property or income therefrom shall pass to or for the use of any father, mother, husband, wife, child, brother, sister, wife or widow of the son, or husband of the daughter, or any child or children adopted as such in conformity with the laws of the state of Nebraska, or to any person to whom the deceased for not less than ten years prior to death stood in the acknowledged relation of a parent, or to any lineal descendant born in lawful wedlock in every such case the rate of tax shall be one dollar on every one hundred dollars of the clear market value of such property received by each person, and at the same rate for every less amount; provided, that any estate which may be valued at a less sum than ten thousand dollars shall not be subject to any such duty or the taxes, and the taxes to be levied in the above case only upon the excess of ten thousand dollars received by each person; when the beneficial interests to any property or income therefrom shall pass to or for the use of any uncle, aunt, niece, nephew or other lineal descendant of the same, in every such case the rate of such tax shall be two dollars on every one hundred dollars of the clear market value of such property received by each person on the excess of two thousand dollars so received by each person; In all other cases the rate shall be as follows: On each and every hundred dollars of the clear market value of all property and at the same rate for any less amount, up to five thousand dollars, two dollars; on all estates of over five thousand dollars and not exceeding ten thousand dollars, three dollars; on all estates of over ten thousand dollars not exceeding twenty thousand dollars, four dollars; on all estates of over twenty thousand dollars and not exceeding fifty thousand dollars, five dollars; and on all estates over fifty thousand dollars, six dollars; provided that an estate in the above case which may be valued at a sum less than five hundred dollars shall not be subject to any duty or tax. [1901, c. 54. Amended 1905, H. R. 90; 1907, S. F. 41.]

[See notes to the Act of 1905, *ante*, p. 710.]

**5177 S. 2. Estates for life. — Remainder. — Tax when payable.** When any person shall bequeath or devise any property or interest therein or income therefrom to mother, father, husband, wife, brother, or sister, the widow of the son, or the lineal descendant, during the life or for a term of years with remainder to the collateral heir of the decedent, or to the stranger in blood or to a body cor-

porate at their decease on the expiration of such term, the said life estate or estates for a term of years shall be subject to the tax prescribed in section 1, and the property so passing shall be appraised immediately after the death at what was the fair market value thereof at the time of the death of the decedent in the manner hereinafter provided, and after deducting therefrom the value of said life estate, or term of years, the tax prescribed by this act on the remainder shall be immediately due and payable to the treasurer of the proper county, the interest thereon shall be and remain a lien on said property until the same is paid; Provided, that the person or persons or body corporate beneficially interested in the property chargeable with said tax elect not to pay the same until they have come into actual possession or enjoyment of such, in that case such person or persons or body corporate shall give a bond to the state of Nebraska in a penal sum three times the amount of the tax arising upon such estate, with such sureties as the county judge may approve, conditioned for the payment of said tax at such time or period as they or their representatives may come into the actual possession or enjoyment of said property, which bond shall be filed in the office of the clerk of the proper county; Provided, further, that such person shall make a full verified return of said property to said county judge, and file the same in his office within one year from the death of the decedent, and within that period enter into such securities and may renew the same for five years.

**5178 S. 3. Taxes when payable. — Interest.** All taxes imposed by this act, unless otherwise herein provided for, shall be due and payable at the death of the decedent, and interest at the rate of seven per cent per annum shall be charged and collected therefrom for such time as such taxes are not paid; Provided, that if said tax is paid within one year from the accruing thereof, interest shall not be charged or collected thereon, and in all cases where the executors and administrators or trustees do not pay such tax within one year from the death of the decedent they shall be required to give a bond in the form and to the effect prescribed in section two of this act, for the payment of said tax together with interest. (As amended by St. 1911, c. 107.)

**5179 S. 4. Executors, administrators, duties.** Any administrator, executor or trustee having any charge or trust in legacies or property for distribution subject to said tax, shall deduct the tax therefrom, or if the legacy or property be not money, he shall collect the tax thereon upon the appraised value thereof from the legatee or person entitled to such property, and he shall not deliver or be compelled to deliver any specific legacy or property subject to tax to any person until he shall have collected the tax thereon, and whenever any such legacy shall be charged upon or payable out of real estate, the heir or devisee before paying the same shall deduct such tax therefrom and pay the same to the executor, administrator or trustee, and the same shall remain a charge upon such real estate until paid, and the payment thereof shall be enforced by the executor, administrator or trustee in the same manner that the said payment of said legacies might be enforced; if, however, such legacy be given in money to any person for a limited period, he shall retain the tax upon the whole amount, but if it be not in money he shall make application to the court having jurisdiction of his accounts to make apportionment if the case requires it of the sum to be paid into his hands by such legatees, and for such further order relative thereto as the case may require.

**5180 S. 5. Same. — Sale of property.** All executors, administrators and trustees shall have full power to sell so much of the property of the decedent as will enable them to pay said tax, in the same manner as they may be enabled to do by law, for the payment of debts of their testators and intestates and the amount of said tax shall be paid as hereinafter directed.

**5181 S. 6. Same. — Payment of tax. — Voucher on settlement.** Every sum of money retained by any executor, administrator or trustee or paid into his hands for any tax on any property, shall be paid by him within thirty days thereafter to the treasurer of the proper county, and the said treasurer or treasurers shall give, and every executor, administrator or trustee shall take a receipt from him of said payments. The words "proper county" shall be taken to mean the county in which the property was situated and subject to taxation at the time of the death of the owner. [Amended 1905, H. R. 90.]

**5182 S. 7. Trust estates.** Whenever any of the real estate of which any decedent may die seized shall pass to any body corporate or to any person or persons or in trust for them or some of them, it shall be the duty of the executor, administrator or trustee of such decedent to give information thereof, in writing, to the treasurer of the county where said real estate is situated, within six months after they undertake the execution of their expected duties, or if the facts be not known within that period, then within one month after the same shall have come to their knowledge.

**5183 S. 8. Debts. — Refunding tax.** Whenever debts shall be proved against the estate of the deceased after distribution of legacies from which the inheritance tax had been deducted in compliance with this act, and the legatee is required to refund any portion of the legacy, a proportion of the said tax shall be paid to him by the executor or administrator; if the said tax has not been paid into the county treasury or by the county treasurer if it has been so paid. [Amended 1905, H. R. 90.]

**5184 S. 9. Foreign executor. — Transfer of stocks or loans.** Whenever any foreign executors or administrators shall assign or transfer any stocks or loans in this state standing in the name of the decedent, or in trust for a decedent which shall be liable to the said tax, such tax shall be paid to the treasury or treasurer of the proper county on the transfer thereof; otherwise the corporation making such transfer shall become liable to pay such taxes, provided that such corporation has knowledge before such transfer that said stocks or loans are liable for such taxes.

**5185 S. 10. Erroneous taxes. — Refunding.** When any amount of the said tax shall have been paid erroneously to the county treasurer it shall be lawful for him, on satisfactory proof rendered to him of said erroneous payment, to refund and pay to the executor, administrator or trustee, person or persons who have paid any such tax in error, the amount of such tax so paid provided that all applications for the repayment of the said tax shall be made within two years of the date of said payment. [Amended 1905, H. R. 90.]

**5186 S. 11. Appraisement.** In order to fix the value of property of persons whose estate shall be subject to the payment of said tax, the county judge,

whenever an estate appears to be subject to the tax provided by this act or upon the application of any interested party, shall appoint some competent person as appraiser as often as, or whenever occasion may require, whose duty it shall be forthwith to give such notice by mail to all persons, and to such persons as the county judge may by order, direct, of the time and place he will appraise such property; and at such time and place to appraise the property at the fair market value, of the same, and for that purpose the appraiser is authorized by leave of the county judge to use subpoenas and to compel the attendance of witnesses before him, and to take the evidence of such witnesses under oath concerning such property, and the value thereof, and he shall make a report thereof and of such value in writing to the county judge, with the depositions of the witnesses and such other facts relating thereto, as the county judge may by order require to be filed with the records of the county court, and from this report the county judge shall forthwith determine and fix the then cash value of all estates, annuities and life estates for terms of years growing out of said estates, and the tax to which the same is liable, and shall give immediate notice through the mails to all parties known to be interested therein. Any person or persons dissatisfied with the appraisal or assessment, may appeal therefrom to the county court of the proper county within sixty days after the making and filing of such appraisal or assessment, conditioned upon the giving of security to the court to pay all costs, together with all taxes that may be fixed by the court. The said appraisers shall be paid by the county treasurer out of any funds he may have in his hands on account of said tax, on the certificate of the county judge a reasonable fee to be fixed by the county judge together with legal mileage. Witnesses shall be allowed the sum of \$2.00 per day for every day's attendance before the appraisers or county court, together with legal mileage. The officer serving process under this act shall receive the same fees and mileage as is now provided by law for similar services, and the county judge for services performed under this act shall receive the same fees as is now provided by law for similar services. All costs made or incurred under this act shall be paid by the county treasurer out of any funds he may have in his hands on account of said tax, on certificate of the county judge. [Amended March 18, '07; S. F. 21, s. 2.]

**5187 S. 12. Appraiser. — Malfeasance.** Any appraiser appointed under the authority and by virtue of this act who shall take any fee or reward from any executor, administrator, trustee, legatee, next of kin, or heir of any decedent, or from any person or corporation liable to pay said tax or any portion thereof, shall be guilty of a misdemeanor, and upon conviction in any court of competent jurisdiction, he shall be fined not less than one hundred dollars nor more than five hundred dollars, and in addition thereto the county judge shall dismiss him from such service.

**5188 S. 13. Jurisdiction over questions.** The county court in the county in which the real property is situated of a decedent who was not a resident of the state, or in the county of which the deceased was a resident at the time of his death, shall have jurisdiction to hear and determine all questions in relation to all taxes arising under this act, and the county court first acquiring jurisdiction hereunder shall retain the same to the exclusion of every other.

**5189 S. 14. Taxes not paid. — Procedure.** If it shall appear to the county court that any tax accruing under this act has not been paid according to law,

it shall issue a summons commanding the persons or corporation liable to pay such tax or interested in such property to appear before the court on a certain day not more than three months after the date of such summons, to show cause why such tax should not be paid. The process, practice and pleadings and the hearing and determination thereof, and the judgment in said court in such cases shall be the same as those now provided or those which may be hereafter provided in probate cases in the county courts of this state and the fees and costs in such cases shall be the same as in probate cases in the county courts of this state.

**5190 S. 15. Same.** Whenever the treasurer of any county shall have reason to believe that any tax is due and unpaid under this act, after the refusal or neglect of the person interested in the property liable to pay said tax to pay the same, he shall notify the county attorney of the proper county in writing of such refusal to pay said tax, and the county attorney so notified, if he has cause to believe a tax is due and unpaid, shall prosecute the proceeding in the county court in the proper county, as provided in section fourteen of this act, for the enforcement and collection of this tax.

**5191 S. 16. Same. — Report.** The county judge and county clerk of each county shall, every three months, make a statement in writing to the county treasurer of the county, of the party from which or the party from whom they have reason to believe a tax under this act is due and unpaid.

**5192 S. 17. Expenses.** [Repealed. Laws 1905, H. R. 90.]

**5193 S. 18. Records.** The secretary of state shall furnish to each county judge a book in which he shall enter the returns made by appraisers, the cash value of annuities, life estates and terms of years and other property fixed by him, and the tax assessed thereon and the amounts of any receipts for payments thereof filed with him, which book shall be kept in the office of the county judge as public records.

**5194 S. 19. Funds. — Road improvements.** The county treasurer of each county shall keep all money collected under the provisions of this act in a separate and special fund to be expended under the direction of the county board of each county, for the sole purpose of the permanent improvement of the county roads; such roads shall not be built within the corporate limits of any city or village, but shall begin at the limit of any city or village and extending therefrom, in the direction most traveled by the public; to be determined upon by the said county board. Provided that such improvements may be made from the limit of any city of the metropolitan or first class and through a city of the second class, or village where the road so determined upon to be improved is a main road between the country and such city of the metropolitan or first class. All contracts for such permanent improvements shall be let by the said board, by competitive bids after the plans and specifications therefor drawn by the county surveyor or engineer have been filed with the county clerk of each respective county. All bids for the construction of such roads shall be deposited with the county judge of the respective counties and opened by him in the presence of the county commissioner and county clerk, and then filed with the county clerk. All such permanent road beds shall not be less than twelve feet nor more than sixteen feet in

width, and shall be constructed of the most durable and approved material, and the remaining part of the said road shall be constructed at one side of the said permanent part, and be used as dirt road; Provided that it shall be lawful for the county commissioners of any county having a population of not more than thirty thousand to use said fund in the manner herein provided for the improvement of any grade, bridge, cut, fill, or dirt road leading into any city or village within said county. Provided, that all money heretofore paid by the various county treasurers to the state treasurer, under the provisions of this act shall be, upon proper vouchers signed by the county judge and county treasurer, paid back to the said county from which said tax was received, and said money when so refunded by the state treasurer shall be placed in the special fund heretofore mentioned in each county and shall be expended in like manner and for like purposes as hereinabove specified. [Amended 1905, H. R. 90; March 18, 1907; S. F. 21, s. 1.]

**5195 S. 20. Receipts.** Any person or body corporate shall, upon the payment of fifty cents, be entitled to a receipt from the county treasurer of any county or the copy of the receipt at his option, that may have been given by the treasurer for the payment of any tax under this act, which receipt shall designate on what real property, if any, of which deceased may have died seized, said tax has been paid and by whom paid, and whether or not it is in full of said tax, and said receipt may be recorded in the clerk's office of said county in which the property may be situated, in the book to be kept by said clerk for such purpose.

**5196 S. 21. Lien.** The lien of the inheritance tax shall continue until the said tax is settled and satisfied: Provided, that said lien shall be limited to the property chargeable therewith: and Provided further, that all inheritance taxes shall be sued for within five years after they are due and legally demandable, otherwise they shall be presumed to be paid and cease to be a lien as against any purchaser of real estate.

## NEVADA.

### Constitutional Limitations.

**Nevada Constitution, 1864, a. 10.**

S. 1. The legislature shall provide by law for a uniform and equal rate of assessment and taxation, and shall prescribe such regulations as shall secure a just valuation for taxation of all property, real, personal and possessory, excepting mines and mining claims, the proceeds of which alone shall be taxed, and also excepting such property as may be exempted by law for municipal, educational, literary, scientific, religious or charitable purposes.

There is no inheritance tax at present in Nevada.



## NEW HAMPSHIRE.

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New Hampshire's first inheritance tax, one per cent on collateral inheritances, enacted in 1878, was held unconstitutional in 1882. An amendment to the constitution in 1903 paved the way for the present collateral inheritance tax enacted in 1905. The tax is on collateral inheritances only, the rate is uniformly 5 per cent, and no amount is exempt. No tax is levied on an inheritance to father, mother, husband, wife, lineal descendant, brother, sister, adopted child, lineal descendant of adopted child, wife or widow of son, husband of daughter.

New Hampshire taxes stock in a New Hampshire corporation owned by a non-resident and, moreover, taxes registered bonds of a New Hampshire corporation owned by a non-resident though kept outside the state. Corporations and individuals transferring or delivering securities or other assets of non-residents are made responsible for the tax. Railroad, telegraph or telephone stock where the company is organized in more than one state is taxed only on the proportion of the line within New Hampshire.

It is the practice to require a complete inventory of a non-resident's estate.

New Hampshire is the only New England state that has no provision whatever for preventing or reducing double taxation.

### Constitutional Limitations.

#### **New Hampshire Constitution, 1783, Bill of Rights, a. 12.**

Every member of the community has a right to be protected by it in the enjoyment of his life, liberty and property. He is, therefore, bound to contribute his share in the expense of said protection, and to yield his personal service, when necessary, or an equivalent. But no part of a man's property shall be taken from him or applied to public uses without his own consent or that of the representative body of the people. Nor are the inhabitants of this state controllable by any other laws than those to which they or their representative body have given their consent.

#### **New Hampshire Constitution, 1792, pt. 2, a. 5.**

. . . And further full power and authority are hereby given and granted to the said general court . . . to impose and levy proportional and reasonable assessments, rates and taxes upon all the inhabitants of, and residents within the said state; and upon all estates within the same; to be issued and disposed

of by warrant under the hand of the governor of this state for the time being, with the advice and consent of the council, for the public service, in the necessary defence and support of the government of this state, and the protection and preservation of the subjects thereof, according to such acts as are or shall be in force within the same.

**New Hampshire Constitution, 1903, a. 6.**

The public charges of government or any part thereof may be raised by taxation upon polls, estates and other classes of property, including franchises and property when passing by will or inheritance.

*Progressive Tax.* The supreme court was asked its opinion as to the validity of the progressive tax and replied that the question is new in New Hampshire; and on the question whether in view of the constitution as it was construed and understood prior to 1903, it was intended by the amendment then made to authorize a progressive tax, the court is divided in opinion and therefore declines to express any opinion whatever. *In re* Opinion of Justices (N. H. 1911), 79 A. 490.

*Classification by Relationship Upheld.* The court in answer to a request for an opinion sees no objection to an assessment of different rates upon classes standing in different relation to the original owner of the property; that the tax may be assessed at a different rate upon property passing to direct heirs and to collateral, and a distinction may be made between relatives more or less remote in the direct line. *In re* Opinion of Justices (N. H. 1911), 79 A. 490.

*Tax need not be Proportional.* The court holds that the intention and effect of the amendment of 1903 to the constitution of New Hampshire was to provide in addition to taxation as hereto defined a different method of meeting public charges by an inheritance tax. As an inheritance tax is necessarily disproportional and is unequal in its lack of proportion, and it is impossible to lay a proportional tax upon property upon the occasion of death, it cannot have been understood that such impossibility would defeat the express power to lay such a tax, but it must follow that the express authority to impose such a tax is an authority to disregard the general rule of proportion so far as is necessary to exercise the power. For instance, poll taxes are recognized by the constitution, but they are not proportional, they are constitutional acts recognized by the constitution and have never been understood to have been rendered unconstitutional by lack of proportion or inability to pay, *Thomp-*

*son v. Kidder*, 74 N. H. 89, 96, 65 A. 392. The constitution as it was before the amendment of 1903 provided that every inhabitant is bound to contribute only his share, which, according to the uniform decisions of the New Hampshire court for more than half a century, cannot be more than his proportional share of the common burden. *Curry v. Spencer*, 61 N. H. 624, 630, 60 Am. St. Rep. 337.

### List of Statutes.

1878.	Statutes of New Hampshire,	c. 74.
1878.	General Laws,	c. 64, p. 163.
1883.	Statutes of New Hampshire,	c. 50.
1883.	" " "	" c. 75.
1905.	" " "	" c. 40, p. 432, ss. 1 to 23.
1907.	" " "	" c. 64, p. 63.
1907.	" " "	" c. 68, p. 66.
1907.	" " "	" c. 69, p. 71.
1907.	" " "	" c. 82, p. 85.
1907.	" " "	" c. 86, p. 89.
1907.	" " "	" c. 138, p. 136.
1909.	" " "	" c. 104, p. 444.
1911.	" " "	" c. 42, p. 44.

### History.

The New Hampshire constitution of 1783 and its antecedents and the history of legislation in New Hampshire are discussed in *Thompson v. Kidder*, 74 N. H. 89, 94, 65 A. 392.

### THE UNCONSTITUTIONAL STATUTE OF 1878.

N. H. St. 1878, c. 74. Approved August 17, 1878.

S. 1. All estates settled in the probate courts of this state, and all transfers of property from the dead to the living, by gift, bequest or devise, and every succession made under the laws of this state, regulating the distribution of intestate estates, exclusive of the just indebtedness of each and all of said estates, shall pay one per cent on the value of said estates, to be deducted from each gift, bequest or distributive share, by the administrator or executor, so that each gift, bequest or distributive share shall pay its proportional rate; provided, that all legacies or property passing by will or by the laws of this state to husband or wife, children and grandchildren of the person who died possessed as aforesaid, shall be exempt from tax or duty; provided, further, that any legacy or share of personal property, or any devise or share of real estate, passing as aforesaid, to a minor child of the person who died possessed as aforesaid, shall be exempt from taxation under this section, unless such legacy or share of personal estate, and devise or share of the real estate, shall exceed the sum of one thousand dollars, in which case the excess only above that sum shall be liable to such

taxation; provided, further, that the aggregate of such legacy or share of the personal estate, and devise and share of the real estate, shall not exceed the sum of one thousand dollars to such minor child.

### **Power to Tax. — Nature of Right of Succession.**

"It is not to be questioned that the power to tax is vested in the legislature; that it is unrestricted, except when it is opposed to some provision of the federal or state constitution; and that it extends 'to every trade or occupation, to every object of industry, use or enjoyment, and to every species of possession.' Nor is it to be questioned that the subject of taxation in the present case is one within legislative control, because inheritances, distributive shares, and legacies are but creatures of the law; in fact, the only right to take or dispose of property by descent or devise is derived from the sovereign power of the state through its laws. Wills, therefore, and testaments, rights of inheritance and successions, are all of them creatures of the civil or municipal laws, and accordingly are in all respects regulated by them. 2 Blk. Com. 12." *Per* Blodgett, J., in *Curry v. Spencer*, 61 N. H. 624, 630, 60 Am. St. Rep. 337.

### **Object of Statute is Immaterial.**

The fact that its object was "to defray the cost of probate courts" is not entitled to any weight, because the constitutional rule of equality cannot be limited or qualified by any consideration of expediency or convenience. The purpose of the act cannot change its character in this respect. *Curry v. Spencer*, 61 N. H. 624, 631, 60 Am. St. Rep. 337.

### **Tax not Proportional and hence Void.**

"Immunity from disproportional taxation being expressly reserved in our bill of rights, and the power of proportional taxation only being granted the legislature by the constitution, we are unaware of any ground upon which the statute under consideration (Gen. Laws, c. 64) can be upheld; for if it is to be regarded as a tax on property, it is open to the objection of unequal and double taxation, and if it is to be regarded as a tax on a civil right or privilege it is discriminating and disproportional. See *State v. United States & Can. Express Co.*, 60 N. H. 219." *Per* Blodgett, J., in *Curry v. Spencer*, 61 N. H. 624, 631, 60 Am. St. Rep. 337. The legislature "cannot lawfully make discriminations and cast a burden upon one class of beneficiaries and exempt all other classes from its operation;

and it cannot, therefore, for purposes of taxation exempt legacies and successions to lineal descendants and include only those to collaterals and others than those specified. Such a tax is founded upon pure inequality, and "is simply extortion in the name of taxation; and it can therefore never be sustained in this jurisdiction so long as equality and justice continue to be the basis of constitutional taxation."

The court distinguishes *Eyre v. Jacob*, 14 Gratt. (Va.) 422, and *Tyson v. State*, 28 Md. 577, on the ground that in neither of the states affected was the constitutional restriction on taxes the same as in New Hampshire. *Curry v. Spencer*, 61 N. H. 624, 631, 60 Am. St. Rep. 337.

[A comparison of the constitutions of Maryland and Virginia, however, fails to reveal any basis for this distinction. This case would seem now to be generally discredited. The court in *Thompson v. Kidder*, 74 N. H. 89, 97, 65 A. 392, explains this decision as proceeding on the theory that the privileges of the probate court were in question.—*Ed.*]

N. H. St. 1878, ss. 2 to 24 cover, the assessment, collection and payment of the tax.

N. H. St. 1883, c. 50, repealed General Laws, c. 64 (the inheritance tax), approved August 23, 1883.

N. H. St. 1883, c. 75, provided for the refunding of taxes paid under the unconstitutional statute of 1878.

## THE CONSTITUTIONAL AMENDMENT OF 1903.

[See *ante*, p. 719.]

## THE VALID STATUTE OF 1905.

### Adopted from Massachusetts.

Section 1 of this statute is almost a literal copy of the Massachusetts Revised Laws, c. 15, s. 1, and the other sections of the act are substantially the same as the corresponding sections of the Massachusetts act. Therefore, existing decisions construing the Massachusetts act are adopted by the New Hampshire legislature. *Mann v. Carter*, 74 N. H. 345, 347, 68 N. E. 130.

N. H. St. 1905, c. 40. Approved March 8, 1905.

S. 1. All property within the jurisdiction of the state, real or personal, and any interest therein, whether belonging to inhabitants of the state or not, which shall pass by will, or by the laws regulating intestate succession, or by deed,

grant, sale or gift, made or intended to take effect in possession or enjoyment after the death of the grantor, to any person, absolutely or in trust, except to or for the use of the father, mother, husband, wife, lineal descendant, brother, sister, adopted child, the lineal descendant of any adopted child, the wife or widow of a son, or the husband of a daughter, of a decedent, or to or for the use of charitable, educational or religious societies or institutions in this state, the property of which is by law exempt from taxation, or to a city or town in this state for public purposes, shall be subject to a tax of five per cent of its value, for the use of the state; and administrators, executors and trustees, and any such grantees under a conveyance made during the grantor's life, shall be liable for such taxes, with interest, until the same have been paid.

### Validity.

This statute is constitutional. The court distinguishes *Curry v. Spencer*, 61 N. H. 624, as there the right then in question was the right to the privileges of the probate court for the purposes of administration; and if one estate was entitled to be there settled without payment of fee all were. The right under the N. H. St. 1905, however, is a right to the passing of property, and the court says that there are good reasons why the passing of property to near relatives or the gift of it to charitable purposes or directly to the public should not be subject to an exaction by the state. Reasonable exemptions of property have not been considered to affect the validity of the tax upon other property, and the exemptions in this statute do not render assessment unreasonable. *Thompson v. Kidder*, 74 N. H. 89, 97, 65 A. 392.

*Cf.* notes to the constitutional amendment of 1903, *ante* p. 719.

### "WITHIN THE JURISDICTION OF THE STATE."

#### Corporations Organized in More than one State.

The Boston and Maine Railroad is incorporated under that name in Maine, New Hampshire and Massachusetts, and has but a single issue of stock. It owns franchises and property in all three states which make up the market value of all of its stock.

It was contended that only such proportional part of the market value of the stock should be taxed in New Hampshire as the value of the franchises and property of the corporation here situated bears to the total value of its franchises and property wherever situated. The court relies upon *Kingsbury v. Chapin*, 196 Mass. 533, 82 N. E. 700, and *In re Cooley*, 186 N. Y. 220, 78 N. E. 939, and decides that a due regard for the language of the statute as well as justice to the tax payer calls for such a construction of the law.

"Under N. H. St. 1905, c. 40, s. 1, the statute would seem to be

limited in its operation to such property as is located in the state or such as by reason of the domicile of the owner has its legal situs here and requires the aid of our laws for its transmission.

"The Boston and Maine Railroad is a domestic corporation in each of the states in which it is incorporated; and while the estate of a deceased non-resident stockholder requires the aid of the probate laws of this state to effectuate a transmission of the stockholder's right in the property of the local corporation, their aid is not required to effectuate the transmission of his right to property of the corporation in other states in which it is also chartered; and the value of the property requiring the aid of our laws for its transmission must, in such case at least, be taken as the measure of the tax called for by our statute.

"It may be difficult to ascertain the exact value of the plaintiff's right in the property of the local corporation; but if the tax is assessed upon such a percentage of the value of the stock as the amount of trackage within the state bears to the total trackage in the several states of its incorporation, the practical difficulty may be obviated; and it does not appear that the requirements of the statute would not be met." *Per* Brigham, J., in *Gardiner v. Carter*, 74 N. H. 507, 510, 69 A. 939. (This result is embodied in the present act, section 1—*Ed.*)

#### **Situs of Interest in Savings Banks Deposits.**

Where the testator was domiciled in New Hampshire and had deposits in savings banks in Massachusetts, she had a direct interest in the property as well as in the management of the bank, and her position was in many respects analogous to that of a stockholder in a business corporation. She was in fact one of the owners of the property in the possession of the incorporated partnerships, and therefore, following *Frothingham v. Shaw*, 175 Mass. 59, 65 N. E. 523, this interest is subject to tax under the inheritance tax of New Hampshire. This is property which follows the person of the owner and for many purposes it has situs here. *Mann v. Carter*, 74 N. H. 345, 68 A. 130.

#### **Foreign Executor should take out Ancillary Administration.**

Since the enactment of N. H. St. 1905, c. 40, a foreign executor or administrator where any part of his testator's or intestate's property within the jurisdiction of the state is subject to a tax must take out ancillary administration, and an inventory should be filed as required by chapter 40, section 9; and these steps should

be taken before application is made to the probate court under the statute of 1905, chapter 40, section 14. Petitions under public statutes, chapter 189, section 123, can no longer be maintained if any part of the property of the deceased within the jurisdiction of the state is subject to a tax under statute 1905, chapter 40. *Gardiner v. Carter*, 74 N. H. 507, 510, 69 A. 939.

### Double Taxation Upheld.

Where the testator died living in New Hampshire and having savings banks deposits in Massachusetts these deposits are subject to tax in New Hampshire although they were also subject to tax in Massachusetts. The court relies upon *Blackstone v. Miller*, 188 Mass. 189, 206, 207, and says that "the fact that the property may be subject to a similar burden in another state does not deprive this state of its power to impose the tax here upon the property which passes by inheritance or by will under our laws." The court goes on to say that this is not double taxation, as the two burdens are created by two different independent states for wholly different local purposes. *Mann v. Carter*, 74 N. H. 345, 68 A. 130.

Upon the question of double taxation the court relies on the following cases:—

*Hartman Case*, 70 N. J. Eq. 664, 667; *Hopkins Appeal*, 77 Conn. 644; *Bridgeport Trust Co.*, 77 Conn. 657; *Matter of Swift*, 137 N. Y. 77, 18 L. R. A. 709; *Matter of Houdayer*, 150 N. Y. 37, 34 L. R. A. 235, 55 Am. St. Rep. 642; *State v. Dalrymple*, 70 Md. 294, 3 L. R. A. 372; *Eidman v. Martinez*, 184 U. S. 578, 581; *Dos Passos Inher. Taxes*, 29; *Dacey Conf. Laws*, 682, *et seq.* But see *In re Joyslin*, 76 Vt. 88.

### "Charitable, Educational or Religious Societies."

Congregational and Baptist churches are religious societies and public charitable associations or societies within the meaning of the act of 1895, c. 66. *Carter v. Eaton*, 75 N. H. 560, 78 Alt. 643. Societies connected with the Methodist church for religious, educational and philanthropic purposes are therefore charitable, and the fact that they may more directly benefit their members than those who are not members does not deprive them of their public character. They are therefore exempt from taxation under the act of 1905. *Carter v. Whitcomb*, 74 N. H. 482, 69 A. 779.

The Home Missionary Society was not entitled to an exemption as it devoted substantially all its funds to the support of charities outside of New Hampshire. The question was whether its charity



was of such a character and so administered as to be of any substantial benefit or advantage to the people of New Hampshire, and this was a question of fact to be determined upon competent evidence. *Carter v. Whitcomb*, 74 N. H. 482, 491, 69 A. 779.

The Home for Aged Women is a charitable corporation although its beneficiaries are required to turn over to the institution what property they possess, and they are required to pay an established fee upon their admission. *Carter v. Whitcomb*, 74 N. H. 482, 488, 69 A. 779.

A legacy to the New Hampshire Baptist convention was not subject to the inheritance tax. The convention is authorized by its charter to receive and hold donations and use the same for "the purpose of promoting foreign and domestic missions and the education of indigent and pious young men for the gospel ministry and any other religious charities which they may deem proper." The convention had always confined its work to this state, and purposes to ask the legislature to amend its charter so as to prevent its use of funds outside the state. In view of these facts it seems clear that the charity is of substantial benefit to the people of New Hampshire and is therefore exempt from taxation. *Carter v. Story*, (N. H. 1911,) 78 A. 1072.

The Woman's Foreign Missionary Society, the principal object of which is the "evangelization of heathen women," is not a public charity, even though there may be heathen women in New Hampshire, as it was found that none of the funds of the society could be used within the state of New Hampshire. "The expenditure of large sums of money for the enlightenment upon religious subjects of the natives of the antipodes evidently was not one of the objects the legislature intended to encourage, when in 1895 the property of charitable associations 'devoted exclusively to the uses and purposes of public charity' was exempted from taxation, or when in 1905 legacies to such associations 'in the state' were exempted from the inheritance tax." *Per Walker, J.*, in *Carter v. Whitcomb*, 74 N. H. 482, 489, 69 A. 779.

The Woman's Relief Corps is a public charity exempt from the inheritance tax although its benefits are bestowed only upon those who have been soldiers or upon their families to the exclusion of all others. *Carter v. Whitcomb*, 74 N. H. 482, 489, 69 A. 779.

The Young Women's Christian Association, which holds gospel services, teaches English to foreigners and furnishes food and lodging for women passing through the city, for which compensa-

tion is received from those who are able to pay, is religious and charitable in its general object, and is therefore entitled to exemption from the inheritance tax. So the Woman's Auxiliary of the Young Men's Christian Association is also charitable and exempt from the inheritance tax. *Carter v. Whitcomb*, 74 N. H. 482, 488, 69 A. 779.

*Legacy to Church as Trustee.* A legacy was made to a Baptist church of three thousand dollars, the income of which is to be used for the benefit of the church. The court holds that as the church holds the principal fund as trustee and can only use the income, and since the income can only be used for church purposes, it follows that the legacy is not subject to the inheritance tax. *Carter v. Story*, (N. H. 1911,) 78 A. 1072 (citing *Carter v. Eaton*, 75 N. H. 560, 78 A. 643).

*Use Determines Exemption.* Under the New Hampshire statute of 1905, as amended in 1907, if the gift is absolute it is the use made of the property or fund constituting the gift that determines the exemption, but if it is in trust it is the use made of the income or beneficial interest that governs, for in such case it is that property or interest alone which comes into the hands of the donee for use. And so where bonds are given to churches as trustees the question is not whether the bonds should be exempt from tax, but whether their income in the hands of the beneficiaries should be exempt. *Carter v. Eaton*, 75 N. H. 560, 78 A. 643.

"The property of which is by law exempt from taxation" does not require that the exemption shall only apply when the association holds *all* its property free from yearly taxation. The sole test suggested by the . . . statute . . . is to ascertain whether the legatee is a charitable, educational or religious society whose property when used exclusively in carrying out the purposes of the association is exempt from taxation. It is the character of the institution and the purposes it was organized to accomplish and its liability or non-liability to taxation for property devoted to those purposes that determine whether it falls within or without the exception provided in the inheritance tax law." *Carter v. Whitcomb*, 74 N. H. 482, 485, 69 A. 779.

*Whether inheritance taxes are a charge against the estate* or are to be deducted from the several legacies is a question of the testator's intention. Where the will directs the executors to pay taxes that may become due upon any legacies "given by this will to individuals," this language has no reference to legacies given to indi-

viduals in trust for establishing a charity. *Kingsbury v. Bazeley*, 75 N. H. 13, 70 A. 916.

The question *whether foreign legacy taxes paid are to be deducted or whether they are an expense of administration* which should be paid out of the estate, leaving the legacy payable in full, is a question of intention. Where a testator makes no provision for the payment of such taxes from his estate, he must have intended the actual benefit to be received by the subject of his bounty to be as much less than a sum named in his will as he is presumed to have known the state would take for itself in transmitting property. In a gift of specific personal property located in a foreign state the amount demanded by such state as the price of transfer of title would naturally be a charge against the subject of the legacy, not because of the testator's presumed familiarity with the law of the jurisdiction, but because under that law he has not the power to transfer by will the entire title.

In a gift of a pecuniary legacy of a certain amount, the apparent intention is to benefit the legatee to the full amount named. If such will is to be administered by the law of the jurisdiction imposing no inheritance tax, or none upon the class to which the legatee belongs, the purpose to transmit the full amount to such legatee would seem secure. The conclusion that a less sum was intended because at the time of the testator's death some portion of his property happened to be within the jurisdiction authorizing a tax upon such a transfer seems strained and illogical. To hold that the effect of the foreign law is to reduce the legacy given by the will construed in accordance with the law of the testator's domicile is to permit the foreign law to regulate the testamentary capacity of a citizen of this state; as the foreign tax depends upon the jurisdiction over the property and is not sustainable as a regulation of the exercise of testamentary power by the citizen of another state, it follows that the tax is merely a charge upon the particular property and not upon the pecuniary legacies given by the will.

No exact decision has been found, though it is ruled in considering questions more or less analogous that such taxes are to be deducted from the legacy in New York and not in Massachusetts. *In re Swift*, 137 N. Y. 77, 32 N. E. 1096, and *Hooper v. Shaw*, 176 Mass. 190, 57 N. E. 361. *Kingsbury v. Bazeley*, 75 N. H. 13, 70 A. 916.

"No ground can be found, in the absence of a direction either express or implied in the will, for a *pro rata* distribution among all

the pecuniary legacies of the sums paid as foreign death duties. On account of some legacies a charge may be made in some states and not in others. A deduction from a legacy on account of a tax imposed on others in a particular jurisdiction would not be supported by any basis of reason. The only method which could be followed would be the division of the legacies into as many classes as were made by the laws of all the states in which property was found, and a division of the sums paid *pro rata* among each class. This would plainly be an administration of the estate according to laws which have no force here, and which cannot, in the absence of legislative authority for such course, properly be followed. The executors have in hand, if they are ready to settle, so much property. The will, construed by the law of this state, directs how the distribution shall be made. The fact that the executors have less than they would have had, except for the demands of jurisdictions to which they were obliged to go to get the property and bring it here for distribution, cannot alter the law of the state or the terms of the will. In the absence of evidence from which a contrary direction can be implied from the will, the amount deducted by other states before permitting the transfer of property within their limits to the executor for distribution here (*Greves v. Shaw*, 173 Mass. 205, 209, 53 N. E. 372) is not property within this state for distribution. The executors are chargeable only for what has come to their hands — the property less the duties paid. If they charge themselves with the full value of the property, a practical method of accounting would permit them to discharge themselves by accounting for the foreign duties paid as expenses of administration."

In the present case there are no facts showing an intention to charge the pecuniary legacies with foreign duties for the benefit of the residuary legatees. "There is a class of cases, where the residuary bequest, by reason of the special circumstances of the case, has been construed as a particular legacy, not liable to fail, except ratably with the other legacies, on account of any unexpected deficiency of the estate, or to be augmented by the unforeseen failure of the legacies." 2 Red. Wills, 447; *Dyose v. Dyose*, 1 P. Wms. 305. "There is nothing in the present case tending to show that the residuary bequest was intended as anything except the ordinary disposal of a residuum which might be left, while the first part of the eighty-second clause establishes that the testatrix considered the possibility that the residuary legatees would

receive nothing. In the latter part of the same clause the testatrix directs her executors to pay any and all inheritance and succession taxes that may become due upon any legacies given to individuals. This implies a recognition of the possibility of such taxes, and, as to legatees other than individuals, a purpose that the duties legally chargeable upon such legacies should be borne by them; but as the foreign duties are not due upon the legacies given by the will, but are a deduction from property which may be used in carrying out the purpose of the will, the language is insufficient to require the court to administer the law of all the states in which property may have been found and taxes paid." *Per* Parsons, C. J., in *Kingsbury v. Bazeley*, 75 N. H. 13, 70 A. 916, 919.

S. 2. If a person bequeaths or devises property to or for the use of a father, mother, husband, wife, lineal descendant, brother, sister, an adopted child, the lineal descendant of an adopted child, the wife or widow of a son, or the husband of a daughter, for life or for a term of years, with the remainder to a collateral heir or to a stranger to the blood, the value of such particular estate shall, within three months after the appointment of the executor, administrator or trustee, be appraised in the manner provided in section 16 and deducted from the appraised value of such property, and the remainder shall be subject to a tax of five per cent of its value.

S. 3 covers gifts to executors.

Ss. 4-22 provide for the appraisal of the property, assessment, collection and payment of the tax.

### THE AMENDMENTS OF 1907.

**Exemption of Charitable, etc., Societies.** N. H. St. 1907, approved March 20, 1907, c. 68, s. 1, amended N. H. St. 1905, c. 40, s. 1, by providing that charitable, educational or religious societies or institutions in this state are exempt from taxation "when such society or institution is bound by the terms of the will, deed, grant, sale or gift or by the limitation of its powers to devote such property solely to such uses and purposes that the property in its hands will be by law exempt from taxation."

#### Not Retroactive.

The testator died September 21, 1905, when the N. H. St. 1905, c. 40, was in force. Before a decree of distribution was made in the estate the statute of 1907, c. 68, became effective by making the exemption in the statute of 1905 apply only when the society exempt is bound to devote its property solely to such uses and purposes that the property in its hands will be by law exempt from taxation.

The N. H. St. 1907 is prospective, as it relates to property "which shall pass by will." The rights of the legatees became fixed at the death of the testator, and at the same time the right

of the public to the tax accrued, and the legatees' interest vested at the death of the testatrix or upon the probate of the will. The rights of the parties to the proceeding must be determined in accordance with the statute of 1905, which was in force when the testatrix died. *Carter v. Whitcomb*, 74 N. H. 482, 69 A. 779, 17 L. R. A. (N. S.) 733 n.

**Error corrected.**

N. H. St. 1907, c. 68, s. 2, corrects an error in N. H. St. 1905, s. 2, by inserting the figures 13 in place of the figures 16 where reference is made to the section on appraisals.

**Information by Executor.**

N. H. St. 1905, c. 40, s. 9, is amended by N. H. St. 1907, c. 68, s. 3, by inserting a provision that every administrator shall prepare a statement in duplicate, showing, as far as can be ascertained, the names of all the heirs-at-law and their relationship to the decedent, and every executor shall prepare a like statement showing the relationship to the decedent of all legatees whose relationship is not shown by the will, and the age at the time of the death of the decedent of all legatees to whom property is bequeathed or devised for life or for a term of years, and the names of those, if any, who have died before the decedent, one copy of which the administrator or executor shall file with the state treasurer, and the other with the register of probate, within thirty days after his appointment; and when he files his account in the probate court, he shall file a duplicate thereof with the state treasurer.

**Register to send Copies of Will, etc., to State Treasurer.**

N. H. St. 1905, c. 40, s. 10, is amended by N. H. St. 1907, c. 68, s. 4, by striking out the first sentence of the section and inserting in place thereof the following: "The register of probate shall within thirty days after it is filed, send to the state treasurer, by mail, a copy of every will containing legacies which are subject to a tax under the provisions of this chapter, and a copy of the inventory and appraisal of every estate, any part of which may be subject to such a tax, unless notified by the state treasurer that such copies will not be required."

**Refunding.**

N. H. St. 1905, c. 40, s. 12, is amended by N. H. St. 1907, c. 68, s. 5, by adding the following: "Whenever in such a case the executor, administrator or trustee has paid over the tax to the state treasurer, it shall be repaid to him by the state treasurer."

**Appraisal.**

N. H. St. 1905, c. 40, s. 13, is amended by N. H. St. 1907, c. 68, s. 6, by inserting after the word "property" in the second line of the section, the words "at the time of the death of the decedent," and by striking out in the seventh and eighth lines of said section the words "such return, when accepted by said court, shall be final," and by inserting in the eighth line of said section before the words "the fees" the words "one-half of" and by striking out the words "party

receive nothing. In the latter part of the same clause the testatrix directs her executors to pay any and all inheritance and succession taxes that may become due upon any legacies given to individuals. This implies a recognition of the possibility of such taxes, and, as to legatees other than individuals, a purpose that the duties legally chargeable upon such legacies should be borne by them; but as the foreign duties are not due upon the legacies given by the will, but are a deduction from property which may be used in carrying out the purpose of the will, the language is insufficient to require the court to administer the law of all the states in which property may have been found and taxes paid." *Per* Parsons, C. J., in *Kingsbury v. Bazeley*, 75 N. H. 13, 70 A. 916, 919.

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**Refunding.**

N. H. St. 1905, c. 40, s. 12, is amended by N. H. St. 1907, c. 68, s. 5, by adding the following: "Whenever in such a case the executor, administrator or trustee has paid over the tax to the state treasurer, it shall be repaid to him by the state treasurer."

**Appraisal.**

N. H. St. 1905, c. 40, s. 13, is amended by N. H. St. 1907, c. 68, s. 6, by inserting after the word "property" in the second line of the section, the words "at the time of the death of the decedent," and by striking out in the seventh and eighth lines of said section the words "such return, when accepted by said court, shall be final," and by inserting in the eighth line of said section before the words "the fees" the words "one-half of" and by striking out the words "party



applying for such appraisal" in the ninth and tenth lines of said section and inserting in place thereof the words "state treasurer, and one-half of said fees shall be paid by the other party or parties to said proceeding, provided, however, that in all proceedings arising under this section said probate court upon agreement of parties may appoint a single disinterested appraiser who shall upon oath appraise such property as hereinbefore provided."

#### **Lien.**

N. H. St. 1905, c. 40, s. 14, is amended by N. H. St. 1907, c. 68, s. 7, by adding at the end thereof the following: "Whenever any real estate or separate parcel thereof is subject to a lien created by this act, or any amendment thereof, the probate court shall have jurisdiction in like proceedings to make such order or decree as will otherwise secure to the state the payment of any tax due or to become due on such real estate or separate parcel thereof, and upon the performance of such order or decree to discharge such lien."

#### **Actions to Record Tax.**

N. H. St. 1905, c. 40, s. 17, is amended by N. H. St. 1907, c. 68, s. 8, by striking out, in the first line of said section, the word "shall" and inserting in place thereof the word "may" and by striking out in the second line of said section the words "within six months" and inserting in place thereof the words "at any time."

#### **Delivery of Securities to Foreign Executor.**

N. H. St. 1905, c. 40, s. 19, is amended by N. H. St. 1907, c. 82, by inserting in the eleventh line thereof, after the word "transfer" the following sentence: "When such securities or assets are liable to a tax under the provisions of this chapter, such tax shall be paid before such delivery or transfer," and by inserting in the twelfth line thereof, after the word "examination" the words "or delivery or transfer of such securities or assets before the payment of such tax to the state treasurer."

#### **Parties to Petition by Foreign Administrator.**

N. H. St. 1905, c. 40, s. 20, is amended by N. H. St. 1907, c. 68, by inserting after the words "this act," in the third line of said section, the words "or under section 23 of chapter 189 of the Public Statutes."

#### **Attorney for Collection.**

N. H. St. 1905, c. 40, s. 22, is amended by N. H. St. 1907, c. 138, by substituting a new provision authorizing the state treasurer to appoint an attorney to assist in the collection of the tax with assistants at a total salary not to exceed twenty-one hundred dollars.

#### **Remainders.**

**N. H. St. 1907, c. 64.** Approved March 20, 1907.

S. 1. In all cases where there has been or shall be a devise, descent or bequest, liable to an inheritance tax, to take effect in possession or to come into actual

enjoyment after the expiration of one or more life estates or a term of years, the tax on such property, devise, descent or bequest shall not be payable, nor interest begin to run thereon, except as hereinafter provided, until the person or persons entitled thereto shall come into actual possession of such property, and the tax thereon shall be assessed on the value of the property, at the time when the right of possession accrues to the person entitled thereto as aforesaid, and such person or persons shall pay the tax upon coming into possession of such property. Upon the filing of the bond hereinafter required the executor or administrator of the decedent's estate may settle his account in the probate court without being liable for said tax, provided that such person or persons may pay the tax at any time prior to their coming into possession, and in such cases the tax shall be assessed on the value of the estate at the time of the payment of the tax, after deducting the value of the life estate or estates for years; and provided, further, that the tax on real estate shall remain a lien on the real estate on which the same is chargeable until it is paid. Any person or persons beneficially interested in remainder or reversion in any property liable to a tax upon which such tax is postponed by the provisions of this section shall, within one year after the date of the death of the decedent give bond to the judge of the probate court having jurisdiction of the estate of such decedent, in such amount and with such sureties as said court may approve, conditioned upon the payment of such tax at the time or period when such person or persons shall come into possession or actual enjoyment of the same. If any such person or persons shall fail to file such bond within the period required, the tax shall be due and payable under the provisions of section 4 of chapter 40 of the Laws of 1905.

S. 2. This act shall take effect upon its passage, but shall not apply to the estate of any person who died before the passage thereof.

#### **Compromise of Tax.**

N. H. St. 1907, c. 69, provides that the state treasurer may with the approval of the attorney general effect a settlement of the tax where a devise, descent or bequest is liable to a legacy tax on a contingency or dependent upon the exercise of a discretion, or where the life tenant or tenant for years has a power of appointment.

#### **Bond by Executor who is Residuary Legatee.**

N. H. St. 1907, c. 86, amends Public Statutes, c. 188, s. 13, by extending the provision providing that the executor who is a residuary legatee may give bond to cover the legacy and succession taxes as well as debts and legacies.

#### **Bond by Executor.**

N. H. Public Statutes, c. 188, s. 14, is amended by N. H. St. 1907, c. 86, s. 2, by providing that when a will so directs an executor or trustee under a will shall be exempt from giving a bond except a bond for the payment of debts and legacy and succession taxes.

## THE SUBSTITUTE ACT OF 1911.

N. H. St. 1911, c. 42, approved March 9, 1911, amends the existing law by striking out sections 1-21, and inserting new sections in place thereof, which are printed as the present act, *post*.

### Title.

IN AMENDMENT OF CHAPTER 40 OF THE LAWS OF 1905, as amended by Chapter 68 of the Laws of 1907, relating to a Tax on Collateral Legacies and Successions. Approved March 9, 1911.

### To what Estates Applicable.

S. 2. This act shall not apply to estates of persons deceased prior to the date when it takes effect, or to property passing by deed, grant, bargain, sale or gift taking effect prior to said date; but said estates and property shall remain subject to the provisions of the laws in force prior to the passage of this act. Chapter 64 of the Laws of 1907 is hereby repealed, except in so far as it applies to estates of persons deceased prior to the passage of this act.

S. 3. This act shall take effect upon its passage.

## THE PRESENT ACT.

N. H. St. 1911, c. 42.

### Transfers Taxable. — Exemptions.

S. 1. All property within the jurisdiction of the state, real or personal, and any interest therein, whether belonging to inhabitants of the state or not, which shall pass by will, or by the laws regulating intestate succession, or by deed, grant, bargain, sale or gift, made or intended to take effect in possession or enjoyment after the death of the grantor or donor, to any person, absolutely or in trust, except to or for the use of the father, mother, husband, wife, brother, sister, lineal descendant, adopted child, the lineal descendant of any adopted child, the wife or widow of a son, or the husband of a daughter of a decedent, or to or for the use of educational, religious, cemetery, or other institutions, societies or associations of public charity in this state, or for or upon trust for any charitable purpose in the state, or for the care of cemetery lots, or to a city or town in this state for public purposes, shall be subject to a tax of five per cent of its value, for the use of the state; and administrators, executors, and trustees, and any such grantees under a conveyance made during the grantor's life, shall be liable for such taxes, with interest, until the same have been paid. An institution or society shall be deemed to be in this state, within the meaning of this act, when its sole object and purpose is to carry on charitable, religious or educational work within the state, but not otherwise. When the personal estate so passing from any person not an inhabitant of this state shall consist in whole or in part of shares in any railroad or street railway company or telegraph or telephone company incorporated under the laws of this state and also of some other state or country, so much only of each share as is proportional to the part of such company's right

of way, lying within this state shall be considered as property of such person within the jurisdiction of the state for the purposes of this act.

[See notes to the Acts of 1878 and 1905, *ante*, pp. 721, 723 *et seq.*]

**Life Estates. — Annuities. — Remainder. — Valuation.**

S. 2. When any interest in property less than an estate in fee shall pass by will, or otherwise, as set forth in section 1, to one or more beneficiaries, with remainder to others, the several interests of such beneficiaries, except such as may be entitled to exemption under the provisions of section 1, shall be subject to said tax. The value of an annuity or life estate shall be determined by the "actuaries' Combined Experience Tables," at four per cent compound interest, and the value of any intermediate estate less than a fee shall be so determined whenever possible. The value of a remainder after such estate shall be determined by subtracting the value of the intermediate estate from the total value of the bequest or devise. Whenever such intermediate estate or remainder is conditioned upon the happening of a contingency, or dependent upon the exercise of a discretion, so that the value of either cannot be determined by the tables as hereinbefore provided, the value of the property which is the subject of the bequest shall be determined as provided in section 13, and such value having thus been ascertained the state treasurer shall, upon such evidence as may be furnished by the will and the executor's statement, or by the beneficiaries or otherwise, determine the value of the interests of the several beneficiaries, and the values thus determined shall be deemed to be the values of such several interests for the purpose of the assessment of the tax, except in so far as they shall be changed by the court upon appeal. The executor or any beneficiary aggrieved by such determination of the value of any such interest by the state treasurer may at any time within three months after notice thereof appeal therefrom to the probate court having jurisdiction of the estate of the decedent, which court shall determine such value subject to appeal as in other cases. Whenever the identity of the beneficiary who is to take such a remainder is conditioned upon the happening of a contingency, or dependent upon the exercise of a discretion, the state treasurer shall assess and collect the tax upon such remainder as upon a taxable legacy, and the executor shall be liable for such tax as in other cases. *Provided, however*, that if at the termination of the intermediate estate such remainder, or any portion thereof, shall pass to a person or corporation which at the time of the death of the decedent was exempt from such tax, such person or corporation may at any time within one year after the termination of the intermediate estate, but not afterwards, apply to the probate court for an abatement of the tax on such remainder as provided in section 12, and the state treasurer shall repay the amount adjudged to have been illegally exacted as provided in said section 12, with interest thereon at three per cent per annum from the date of the payment of the tax. *Provided, however*, that the power of the state treasurer, with the approval of the attorney general, to adjust the tax by compromise in certain cases, as set forth in chapter 69 of the Laws of 1907, shall remain in force.

**Gifts to Executors, etc., in Lieu of Compensation.**

S. 3. If a testator gives, bequeaths or devises to his executors or trustees any property otherwise liable to said tax, in lieu of their compensation, the value thereof in excess of reasonable compensation, as determined by the probate court upon the application of any interested party or the state treasurer, shall nevertheless be subject to the provisions of this chapter.

**When Tax Accrues.**

S. 4. All taxes imposed by the provisions of this chapter, including taxes on intermediate estates and remainders as set forth in section 2, shall be due and payable to the state treasurer by the executors, administrators or trustees, at the expiration of two years after the date of their giving bonds. If the probate court has ordered the executor or the administrator to retain funds to satisfy a claim of a creditor, the payment of the tax may be suspended by the court to await the disposition of such claim. If the taxes are not paid when due, interest at the rate of ten per cent per annum shall be charged and collected from the time the same became payable; and said taxes and interest shall be and remain a lien on the property, subject to the taxes until the same are paid.

**Tax to be Deducted.**

S. 5. An executor, administrator or trustee holding property subject to said tax shall deduct the tax therefrom, or collect it from the legatee or person entitled to said property, and he shall not deliver property or a specific legacy subject to said tax until he has collected the tax thereon. When a specific bequest of personal property other than money is subject to a tax under the provisions of this act and the legatee neglects or refuses to pay the tax upon demand, the executor or trustee may, upon such notice as the probate court may direct, be authorized to sell such property, or if the same can be divided, such portion thereof as may be necessary, and shall deduct the tax from the proceeds of such sale, and shall account to the legatee for the balance, if any, of such proceeds in lieu of the property. An executor or administrator shall collect taxes due upon land which is subject to tax under the provisions hereof from the heirs or devisees entitled thereto, and he may be authorized to sell said land according to the provisions of section 8 if they refuse or neglect to pay said tax.

**Tax on Legacy Charged on Real Estate to be Deducted.**

S. 6. If a legacy subject to said tax is charged upon or payable out of real estate, the heir or devisee, before paying it, shall deduct said tax therefrom and pay it to the executor, administrator or trustee, and the tax shall remain a charge upon said real estate until it is paid. Payment thereof may be enforced by the executor, administrator or trustee in the same manner as the payment of the legacy itself could be enforced.

**Deduction of Tax in Case of Particular Estates and Remainders.**

S. 7. When any interest in property less than an estate in fee is devised or bequeathed to one or more beneficiaries with remainder to others, and the interest of one or more of the beneficiaries is subject to said tax, the executor shall deduct the tax upon such taxable interests from the whole property thus devised or bequeathed, and whenever property other than money is so devised or bequeathed he may, unless the taxes upon all the taxable interests are paid when due by the beneficiaries, be authorized to sell such property or such portion thereof as may be necessary, as provided in sections 5 and 8, and having deducted the unpaid taxes on such taxable interests from the proceeds of such sale, he shall account for the balance in lieu of the property sold as in other cases.

**Power of Sale.**

S. 8. The probate court may authorize executors, administrators and trustees to sell the real estate of a decedent for the payment of said tax in the same manner as it may authorize them to sell real estate for the payment of debts.

**Information by Administrators, etc., to be furnished.**

S. 9. Every administrator shall prepare a statement in duplicate, showing as far as can be ascertained the names of all the heirs-at-law and their relationship to the decedent, and every executor shall prepare a like statement showing the relationship to the decedent of all legatees named in the will, and the age at the time of the death of the decedent of all legatees to whom property is bequeathed or devised for life or for a term of years, and the names of those, if any, who have died before the decedent, and shall file same with the register of probate at the time of his appointment. Letters of administration shall not be issued by the probate court to any executor or administrator until he has filed such statement in duplicate, and has given bond with sufficient sureties to pay all taxes for which he may be, or become, liable under the provisions of this act, and to comply with all of its provisions. Every executor and administrator, when he files his account in the probate court, shall file a duplicate thereof with the state treasurer. An inventory and appraisal under oath of the whole of every estate, any part of which may be subject to a tax under the provisions of this act, in the form prescribed by the statute, shall be filed in probate court by the executor, administrator or trustee within three months after his appointment. If he neglects or refuses to comply with any of the requirements of this section he shall be liable to a penalty of not more than one thousand dollars, which shall be recovered by the state treasurer for the use of the state, and after hearing and such notice as the court of probate may require, the said court of probate may remove said executor or administrator, and appoint another person administrator with the will annexed, or administrator, as the case may be; and the register of probate shall notify the state treasurer within thirty days after the expiration of said three months of the failure of any executor, administrator or trustee to file such inventory and appraisal in his office.

**Information to State Treasurer.**

S. 10. The register of probate shall, within thirty days after it is filed, send to the state treasurer, by mail, one copy of every statement filed with him by executors and administrators as provided in section 9, a copy of every will containing legacies which are subject to a tax under the provisions of this chapter, and a copy of the inventory and appraisal of every estate, any part of which may be subject to such a tax, unless notified by the state treasurer that such copies will not be required. The fees for such copies shall be paid by the state treasurer. The register shall also furnish such copies of papers and such information as to the records and files in his office, in such form as the state treasurer may require. A refusal or neglect by the register so to send such copies, or to furnish such information, shall be a breach of his official bond. The fees of registers of probate for copies furnished under the provisions of this section shall be one dollar for each will or inventory not exceeding four full typewritten pages, eight by ten and one-half inches, and twenty-five cents for each page in excess of four.

was of such a character and so administered as to be of any substantial benefit or advantage to the people of New Hampshire, and this was a question of fact to be determined upon competent evidence. *Carter v. Whitcomb*, 74 N. H. 482, 491, 69 A. 779.

The Home for Aged Women is a charitable corporation although its beneficiaries are required to turn over to the institution what property they possess, and they are required to pay an established fee upon their admission. *Carter v. Whitcomb*, 74 N. H. 482, 488, 69 A. 779.

A legacy to the New Hampshire Baptist convention was not subject to the inheritance tax. The convention is authorized by its charter to receive and hold donations and use the same for "the purpose of promoting foreign and domestic missions and the education of indigent and pious young men for the gospel ministry and any other religious charities which they may deem proper." The convention had always confined its work to this state, and purposes to ask the legislature to amend its charter so as to prevent its use of funds outside the state. In view of these facts it seems clear that the charity is of substantial benefit to the people of New Hampshire and is therefore exempt from taxation. *Carter v. Story*, (N. H. 1911,) 78 A. 1072.

The Woman's Foreign Missionary Society, the principal object of which is the "evangelization of heathen women," is not a public charity, even though there may be heathen women in New Hampshire, as it was found that none of the funds of the society could be used within the state of New Hampshire. "The expenditure of large sums of money for the enlightenment upon religious subjects of the natives of the antipodes evidently was not one of the objects the legislature intended to encourage, when in 1895 the property of charitable associations 'devoted exclusively to the uses and purposes of public charity' was exempted from taxation, or when in 1905 legacies to such associations 'in the state' were exempted from the inheritance tax." *Per Walker, J.*, in *Carter v. Whitcomb*, 74 N. H. 482, 489, 69 A. 779.

The Woman's Relief Corps is a public charity exempt from the inheritance tax although its benefits are bestowed only upon those who have been soldiers or upon their families to the exclusion of all others. *Carter v. Whitcomb*, 74 N. H. 482, 489, 69 A. 779.

The Young Women's Christian Association, which holds gospel services, teaches English to foreigners and furnishes food and lodging for women passing through the city, for which compensa-

tion is received from those who are able to pay, is religious and charitable in its general object, and is therefore entitled to exemption from the inheritance tax. So the Woman's Auxiliary of the Young Men's Christian Association is also charitable and exempt from the inheritance tax. *Carter v. Whitcomb*, 74 N. H. 482, 488, 69 A. 779.

*Legacy to Church as Trustee.* A legacy was made to a Baptist church of three thousand dollars, the income of which is to be used for the benefit of the church. The court holds that as the church holds the principal fund as trustee and can only use the income, and since the income can only be used for church purposes, it follows that the legacy is not subject to the inheritance tax. *Carter v. Story*, (N. H. 1911,) 78 A. 1072 (citing *Carter v. Eaton*, 75 N. H. 560, 78 A. 643).

*Use Determines Exemption.* Under the New Hampshire statute of 1905, as amended in 1907, if the gift is absolute it is the use made of the property or fund constituting the gift that determines the exemption, but if it is in trust it is the use made of the income or beneficial interest that governs, for in such case it is that property or interest alone which comes into the hands of the donee for use. And so where bonds are given to churches as trustees the question is not whether the bonds should be exempt from tax, but whether their income in the hands of the beneficiaries should be exempt. *Carter v. Eaton*, 75 N. H. 560, 78 A. 643.

"The property of which is by law exempt from taxation" does not require that the exemption shall only apply when the association holds *all* its property free from yearly taxation. The sole test suggested by the . . . statute . . . is to ascertain whether the legatee is a charitable, educational or religious society whose property when used exclusively in carrying out the purposes of the association is exempt from taxation. It is the character of the institution and the purposes it was organized to accomplish and its liability or non-liability to taxation for property devoted to those purposes that determine whether it falls within or without the exception provided in the inheritance tax law." *Carter v. Whitcomb*, 74 N. H. 482, 485, 69 A. 779.

*Whether inheritance taxes are a charge against the estate* or are to be deducted from the several legacies is a question of the testator's intention. Where the will directs the executors to pay taxes that may become due upon any legacies "given by this will to individuals," this language has no reference to legacies given to indi-



viduals in trust for establishing a charity. *Kingsbury v. Bazeley*, 75 N. H. 13, 70 A. 916.

The question *whether foreign legacy taxes paid are to be deducted or whether they are an expense of administration* which should be paid out of the estate, leaving the legacy payable in full, is a question of intention. Where a testator makes no provision for the payment of such taxes from his estate, he must have intended the actual benefit to be received by the subject of his bounty to be as much less than a sum named in his will as he is presumed to have known the state would take for itself in transmitting property. In a gift of specific personal property located in a foreign state the amount demanded by such state as the price of transfer of title would naturally be a charge against the subject of the legacy, not because of the testator's presumed familiarity with the law of the jurisdiction, but because under that law he has not the power to transfer by will the entire title.

In a gift of a pecuniary legacy of a certain amount, the apparent intention is to benefit the legatee to the full amount named. If such will is to be administered by the law of the jurisdiction imposing no inheritance tax, or none upon the class to which the legatee belongs, the purpose to transmit the full amount to such legatee would seem secure. The conclusion that a less sum was intended because at the time of the testator's death some portion of his property happened to be within the jurisdiction authorizing a tax upon such a transfer seems strained and illogical. To hold that the effect of the foreign law is to reduce the legacy given by the will construed in accordance with the law of the testator's domicile is to permit the foreign law to regulate the testamentary capacity of a citizen of this state; as the foreign tax depends upon the jurisdiction over the property and is not sustainable as a regulation of the exercise of testamentary power by the citizen of another state, it follows that the tax is merely a charge upon the particular property and not upon the pecuniary legacies given by the will.

No exact decision has been found, though it is ruled in considering questions more or less analogous that such taxes are to be deducted from the legacy in New York and not in Massachusetts. *In re Swift*, 137 N. Y. 77, 32 N. E. 1096, and *Hooper v. Shaw*, 176 Mass. 190, 57 N. E. 361. *Kingsbury v. Bazeley*, 75 N. H. 13, 70 A. 916.

"No ground can be found, in the absence of a direction either express or implied in the will, for a *pro rata* distribution among all

the pecuniary legacies of the sums paid as foreign death duties. On account of some legacies a charge may be made in some states and not in others. A deduction from a legacy on account of a tax imposed on others in a particular jurisdiction would not be supported by any basis of reason. The only method which could be followed would be the division of the legacies into as many classes as were made by the laws of all the states in which property was found, and a division of the sums paid *pro rata* among each class. This would plainly be an administration of the estate according to laws which have no force here, and which cannot, in the absence of legislative authority for such course, properly be followed. The executors have in hand, if they are ready to settle, so much property. The will, construed by the law of this state, directs how the distribution shall be made. The fact that the executors have less than they would have had, except for the demands of jurisdictions to which they were obliged to go to get the property and bring it here for distribution, cannot alter the law of the state or the terms of the will. In the absence of evidence from which a contrary direction can be implied from the will, the amount deducted by other states before permitting the transfer of property within their limits to the executor for distribution here (*Greves v. Shaw*, 173 Mass. 205, 209, 53 N. E. 372) is not property within this state for distribution. The executors are chargeable only for what has come to their hands — the property less the duties paid. If they charge themselves with the full value of the property, a practical method of accounting would permit them to discharge themselves by accounting for the foreign duties paid as expenses of administration."

In the present case there are no facts showing an intention to charge the pecuniary legacies with foreign duties for the benefit of the residuary legatees. "There is a class of cases, where the residuary bequest, by reason of the special circumstances of the case, has been construed as a particular legacy, not liable to fail, except ratably with the other legacies, on account of any unexpected deficiency of the estate, or to be augmented by the unforeseen failure of the legacies." 2 Red. Wills, 447; *Dyose v. Dyose*, 1 P. Wms. 305. "There is nothing in the present case tending to show that the residuary bequest was intended as anything except the ordinary disposal of a residuum which might be left, while the first part of the eighty-second clause establishes that the testatrix considered the possibility that the residuary legatees would

## NEW JERSEY.

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New Jersey has had a collateral inheritance tax since 1892. There have been various revisions, the last one in 1909.

A strict construction of the constitutional requirement that the title shall express the subject of a statute has played havoc with the inheritance taxes, no less than three acts having been declared ineffective in part for defective titles.

Collateral inheritances only are taxed, at the uniform rate of five per cent, with an exemption of \$500 which applies to individual shares, not to the estate as a whole. Inheritances not taxed are those to father, mother, husband, wife, child, lineal descendant, brother, sister, wife or widow of son, husband of daughter.

Under the present law New Jersey is taxing stock in a New Jersey corporation owned by a non-resident. A corporation which transfers such stock without permission from the comptroller is responsible for the tax and subject to a penalty as well.

If the entire estate of a non-resident passes to exempt heirs, the executor or administrator must file with the comptroller a copy of the will, if any, and an affidavit setting forth the names and relationship of the beneficiaries, whereupon a waiver will be issued permitting any New Jersey stock to be transferred.

If any portion of a non-resident's estate goes to other than exempt heirs, it is necessary to file in addition a complete inventory of the estate. In such a case the tax on the portion of the estate in New Jersey is that proportion of the tax which the estate would have had to pay if the deceased had been a resident of New Jersey which the New Jersey portion of the estate bears to the entire estate.

The comptroller is authorized to make an arrangement to pay a percentage of the tax that may be collected to any person giving information about estates of residents that have not taken out administration within one year after the date of death, and estates of non-residents that have any property taxable in the state if the tax is not paid within three months after the death.

### List of Statutes.

1709-1895. Gen. Sts. of New Jersey, Vol. 3, p. 3339-3344.

1892.	Statutes	"	"	"	c. 122, p. 206.	
1893.	"	"	"	"	c. 210, p. 367.	
1894.	"	"	"	"	c. 210, p. 318.	(Also Gen. Sts. p. 3339.)
1898.	"	"	"	"	c. 62, p. 106.	
1902.	"	"	"	"	c. 217, p. 670.	
1903.	"	"	"	"	c. 90, p. 128.	
1906.	"	"	"	"	c. 227, p. 432.	
1906.	"	"	"	"	c. 228, p. 432.	
1908.	"	"	"	"	c. 131, p. 200.	
1909.	"	"	"	"	c. 31, p. 49.	
1909.	"	"	"	"	c. 159, p. 236.	
1909.	"	"	"	"	c. 209, p. 304.	
1909.	"	"	"	"	c. 228, p. 325.	
1909.	"	"	"	"	c. 238, p. 375.	
1910.	"	"	"	"	c. 28, p. 42.	

### Constitutional Limitations.

**New Jersey Constitution. Amendment of 1844.**

Art. 4, S. 7, No. 12. Property shall be assessed for taxes under general laws, and by uniform rules, according to its true value.

S. 7, No. 4. To avoid improper influences which may result from intermixing in one and the same act such things as have no proper relation to each other, every law shall embrace but one object, and that shall be expressed in the title. No law shall be revived or amended by reference to its title only; but the act revived, or the section or sections amended, shall be inserted at length. No general law shall embrace any provision of a private, special or local character. No act shall be passed which shall provide that any existing law, or any part thereof, shall be made or deemed a part of the act, or which shall enact that any existing law, or any part thereof, shall be applicable, except by inserting it in such act.

### THE STATUTE OF 1892.

N. J. St. 1892, c. 122, approved March 23, 1892, provided a collateral inheritance tax of five per cent. It was repealed by N. J. St. 1893, c. 210.

The acts of 1892 and 1893 are void as to realty, as the title does not mention real estate, which defect was avoided in the act of 1894. *Grossman v. Hancock*, 58 N. J. L. 139, 32 A. 689; *Von Riper v. Heffenheimer*, 17 N. J. L. J. 49; *In re Dobermiller*, 17 N. J. L. J. 378.

### THE STATUTE OF 1893.

N. J. St. 1893, approved March 16, 1893, c. 210, p. 367, s. 1, provides for a tax of five per cent on collaterals, with an exemption where an estate may be valued at less than five hundred dollars.

The act is void as to real estate, as the title does not mention real estate. *Grossman v. Hancock*, 58 N. J. L. 139, 32 A. 689; *Von Ripper v. Heffenheimer*, 17 N. J. L. J. 49; *In re Dobermiller*, 17 N. J. L. J. 378.

Ss. 2-22 cover the assessment, collection and payment of the tax.

S. 4. And be it enacted, That all taxes imposed by this act, unless otherwise herein provided for, shall be due and payable at the death of the testator, grantor, or intestate, as the case may be, and if the same are paid within one year, interest at the rate of six per centum per annum shall be charged and collected thereon, but if not so paid, interest at the rate of ten per centum per annum shall be charged and collected from the time said tax accrued; provided, that if said tax is paid within six months from the accruing thereof, interest shall not be charged or collected thereon, but a discount of five per centum shall be allowed and deducted from said tax; and in all cases where the executors, administrators or trustees do not pay such tax within one year from the death of the decedent they shall be required to give a bond, in the form and to the effect prescribed in section two of this act, for the payment of said tax, together with interest.

#### **Future Indeterminate Interests are Taxable.**

N. J. St. 1893, c. 210, s. 4, provides that all taxes imposed by the act shall be due at the death of the testator unless otherwise provided and it was claimed that the necessary effect of this language was that the act does not provide for the imposition of a tax which cannot be determined at the death of the testator. But this contention fails to take account of the phrase in this fourth section that the tax imposed by the act shall be due and payable at the death of the testator unless otherwise provided. It also fails to take account of the provision of section 13, to the effect that in order to fix the value of property subject to the tax, the surrogate or register of the prerogative court shall "appoint an appraiser as often as and whenever the occasion may require." The court relies on similar provisions in the New York statute as construed in *In re Stewart*, 131 N. Y. 274. *Hoyt v. Hancock*, 65 N. J. Eq. 688, 55 A. 1004.

S. 13. And be it enacted, That in order to fix the value of property of persons whose estates shall be subject to the payment of said tax, the surrogate or register of the prerogative court, on the application of any interested party, or upon his own motion, shall appoint some competent person as appraiser as often as, and whenever occasion may require, whose duty it shall be forthwith to give such notice by mail, and to such persons as the surrogate or register of the prerogative court may by order direct, of the time and place he will appraise such property, and at such time and place to appraise the same at its fair market value, and make a report thereof in writing to said surrogate or register of the

prerogative court, together with such other facts in relation thereto as said surrogate or register of the prerogative court may by order require, to be filed in the office of such surrogate or register of the prerogative court, and from this report the said surrogate or register of the prerogative court shall forthwith assess and fix the then cash value of all estates, annuities and life estates, or term of years growing out of said estates, and the tax to which the same is liable, and shall immediately give notice thereof by mail to the state comptroller and to all parties known to be interested therein; any person or persons dissatisfied with said appraisement or assessment may appeal therefrom to the ordinary or orphans' court of the proper county, within sixty days after the making and filing of such assessment, on paying or giving security, approved by the ordinary or orphans' court, to pay all costs, together with whatever tax shall be fixed by said court; the said appraiser shall be paid by the state treasurer on the warrant of the comptroller, on the certificate of the ordinary or surrogate, duly filed with the comptroller, at the rate of three dollars per day for every day actually and necessarily employed in said appraisement, together with his actual and necessary traveling expenses.

[See notes to section 4, *ante*, p. 744.]

## THE STATUTE OF 1894.

### History — Construction.

The New Jersey statute of 1894 was modelled after the New York act of 1885, and if the New Jersey legislature had made no change in that act it would be held upon well-settled principles to have adopted with the act the construction previously placed thereon by the New York courts in the case of *Enston*, 113 N. Y. 174, 21 N. E. 87. *Neilson v. Russell*, 76 N. J. L. 655, 71 A. 286, 287.

N. J. St. 1894, c. 210, p. 318. Approved May 15, 1894.

### Taxable Transfers. — Rate.

S. 1. Be it enacted by the Senate and General Assembly of the State of New Jersey, That after the passage of this act all property which shall pass by will or by the intestate laws of this state from any person who may die seized or possessed of the same while being a resident of the state, and all property which shall be within this state, and any part of such property, and any interest therein or income therefrom, which shall be transferred by inheritance, distribution, bequest, devise, deed, grant, sale or gift aforesaid, made or intended to take effect in possession or enjoyment after the death of the intestate, testator, grantor or bargainor, to any person or persons, or to a body politic or corporate, excepting churches, hospitals and orphan asylums, public libraries, bible and tract societies, and all religious, benevolent and charitable institutions and organizations, in trust or otherwise, or by reason whereof any person or body politic or corporate shall become beneficially entitled, in possession or expectancy, to such property, or to the income thereof, other than to or for the use of the father, mother, husband, wife, children, brother or sister, or lineal descendants

born in lawful wedlock, or the wife or widow of a son, or the husband of a daughter, shall be subject to a tax of five dollars on every hundred dollars of the clear market value of such property, to be paid to the treasurer of the state of New Jersey for the use of the state, and all administrators, executors and trustees shall be liable for any and all such taxes until the same shall have been paid as hereinafter directed; provided, that an estate which may be valued at a less sum than five hundred dollars shall not be subject to said duty or tax.

As to exemptions, see *post*, p. 759.

The New Jersey statute of 1894 taxes the legacy and not the estate. *Neilson v. Russell* 76 N. J. L. 655, 71 A. 286, reversing 76 N. J. L. 27, 69 A. 476.

### **Distinguished from the New York Act.**

The New Jersey statute of 1894 modified the language of the New York statute of 1885 by inserting at the beginning of the clause the words "all property" in place of the mere relative "which," and by adding the words "inheritance, distribution, bequest, devise."

This act differs from the New York act of 1892, which assumes to tax the transfer of property within the jurisdiction, while the New Jersey statute of 1894 does not undertake to tax all transfers of property within the jurisdiction, but only taxes an inheritance, distribution, bequest or devise. In this respect the New Jersey statute differs also from the Maryland statute construed in *State v. Dalrymple*, 70 Md. 294, 17 A. 82, 3 L. R. A. 372. For the same reason the question is different from what it is in Massachusetts as in *Greves v. Shaw*, 173 Mass. 205, 53 N. E. 372. In short, the New Jersey statute imposes a legacy duty and not a transfer or succession tax as was decided in reference to the English statute in *Thomason v. Advocate General*, 12 Cl. & F. 1. *Neilson v. Russell*, 76 N. J. L. 655, 71 A. 286, reversing 76 N. J. L. 27, 69 A. 476.

### **Constitutionality.**

The act of 1894 is not a property tax and is constitutional. *Neilson v. Russell*, 76 N. J. L. 655, 71 A. 286, reversing 76 N. J. L. 27, 69 A. 476.

### **Double Taxation Upheld.**

The situs of personal property for the purpose of a legacy or succession tax is the domicile of the decedent and the right to its imposition is not affected by the statute of a foreign state

which subjects to similar taxation such portion of the personal estate of any non-resident testator or intestate as he may take and leave there for safe keeping or until it should suit his convenience to carry it away. *In re Hartman*, 70 N. J. Eq. 664, 62 A. 560.

**"A Resident of the State."**

The decedent was the wife of an Episcopal rector in Dover, New Jersey, who resided there at the death of the decedent. The decedent was a wealthy woman and at the time of her marriage owned and resided in a comfortable property in New York City, and until her death maintained her establishment in that place. She had repeatedly declared that she would never remove to Dover, where her husband resided, for the purpose of establishing her home there. After the marriage her husband lived with the decedent in New York City during the week, she going with him to Dover at the end of each week, where they remained until the beginning of the next week, in order that he might officiate during the Sunday services. But she used to spend about two weeks in the spring and the same period in the fall of each year at the rectory in Dover as a part of her summer vacation. In May, 1903, she accompanied her husband to Dover for the purpose of attending a church entertainment, expecting to remain but a day or two, and while there was taken suddenly ill and died. The court holds that the legal domicile of the husband was in New Jersey and her domicile was therefore also in New Jersey, according to the established rule that where the husband and wife are living together as members of one family, the residence of the husband is considered in law as the residence of the wife. *In re Hartman*, 70 N. J. Eq. 664, 62 A. 560.

**"Property which shall be within this State."**

The court assumes that shares of stock in a New Jersey corporation have a situs in this state, and that succession thereto or transfer thereof may be taxed by the New Jersey legislature. *Neilson v. Russell*, 76 N. J. L. 655, 71 A. 286, reversing 76 N. J. L. 27, 69 A. 476.

There was no doubt expressed in *Neilson v. Russell*, of the power of the legislature to tax the succession to property located in this state of a non-resident decedent. *Dixon v. Russell*, 79 N. J. L. 490, 76 A. 982, reversing 78 N. J. L. 296, 73 A. 51.



**"Inheritance, Distribution, Bequest and Devise." — Non-Residents.**

The court holds that a legacy in an English estate of stock in a New Jersey corporation is not taxable by the New Jersey statute of 1894, even if the court disregards the technical force of the words "*inheritance, distribution, bequest and devise*," and looks at the tax as a succession tax. The tax cannot be sustained as a property tax. The ground upon which it can be sustained is that the rights of testamentary disposition and of succession are creatures of law, and the court thinks that it follows logically that the only law which can impose the terms is the law that creates the right. In this case it is the English law. The title to the stock passed by virtue of the will to the executors from the moment of the testator's death, and the probate was operative only as the authenticated evidence, not as the foundation of the executors' title. The English executors were authorized without probate in this state to transfer the stock.

The court remarks that the New Jersey administration is ancillary only and the provisions of the statute authorizing the executors to collect the tax from the legatee or to take it from the legacy cannot be enforced; and after administration here the balance of the estate would probably be transferred to the English executors for distribution in accordance with the laws of the domicile of the testator. *Neilson v. Russell*, 76 N. J. L. 655, 71 A. 286, reversing 76 N. J. L. 27, 69 A. 476.

Where the decedent had never resided in New Jersey, and was not seized of real estate in New Jersey, the court holds that the tax upon non-residents was imposed only in case of inheritance, distribution, bequest and devise. The court holds that these words were naturally applicable to the general succession to the whole estate and not to the particular succession to a special portion of the estate which in this case is the stock of a New Jersey corporation. That general succession was succession under the foreign law and therefore not taxable in this state. *Astor v. State* (N. J. 1903), 72 A. 78 (governed by *Neilson v. Russell*, *ante*).

**Marshaling Assets.**

The executor could not release the New Jersey property of a resident of New York from taxation by applying it to the payment of exempt legacies and by paying the taxable legacies out of the New York property.

The court remarks upon *In re James*, 144 N. Y. 6, 38 N. E. 961, where the New York court held that the devotion of the New York property to the payment of exempt legacies rendered that property immune from the imposition of the collateral inheritance tax under a New York statute.

In Massachusetts a different rule has been applied, on the ground that the property passed at the death of the testator, in *Kingsbury v. Chapin*, 196 Mass. 533, and this rule, adopted in *Kingsbury v. Chapin*, has subsequently been followed in *In re Ramsdill*, 190 N. Y. 492, 83 N. E. 584, so far as it applied to intestacy.

The court says that there is no ground apart from strictly specific legacies for differentiating the case of intestacy from that of testacy; and it therefore applies to the case of a testator. *Tilford v. Dickinson* 79 N. J. L. 302, 75 A. 574, reversed on another point in 79 N. J. L. 574, 79 A. 1119.

### **Taxation not Dependent on Probate in New Jersey.**

Where there is a question whether a married woman is domiciled within the state of New Jersey or of New York, the fact that the will was never probated in New Jersey, but the probate was taken out in New York, does not deprive the state of New Jersey of jurisdiction to levy an inheritance tax upon it. The authority of the surrogate does not depend upon the probate of the will which speaks from the death of the testatrix. *In re Hartman*, 70 N. J. Eq. 664, 668, 62 A. 560.

### **Power of Appointment.**

If a testator died before the passage of an inheritance tax, leaving a life interest by his will with the power of appointment in the life tenant, it seems that the interest acquired under the appointment is not subject to tax, as that interest is to be considered as acquired at the time of the will taking effect. *Hoyt v. Hancock*, 65 N. J. Eq. 688, 55 A. 1004, relying upon *In re Harbeck*, 161 N. Y. 211.

### **Gift of Bonds to Debtor is Taxable.**

Where the testator was the holder of certain debenture bonds of a corporation and bequeathed these bonds to the corporation, it was contended that no assessment could be made upon this legacy, as such a gift only released to a debtor evidences of his debt held by his creditor. The court replies, however, that the debenture

ture bonds in question were the property of the testator and that when he bequeathed them to the corporation the property passed from him to it; that it might cancel the bonds or it might properly transfer them to any one who might be willing to pay their value and that the tax was properly imposed upon them. *In re Rothschild*, 72 N. J. Eq. 425, 65 A. 1118, affirming 71 N. J. Eq. 210.

S. 2 provides for the appraisal of remainder interests; section 3 covers a tax on legacies to executors; section 4 provides that the tax shall be due at the death of the testator; section 5 covers the penalty.

### **When Executor should Pay Tax. — Liability for Interest and Penalty.**

The executor showed in his account that he had paid a certain sum for inheritance tax, including interest and a penalty, and objection was made to the allowance of the account.

The court holds that the executor is not bound to pay the tax until the expiration of a year allowed him by law within which to settle the estate. He is entitled to know the amount payable for the payment of legacies after the debts are paid and to have a reasonable time thereafter before he pays the tax and the legacies.

The court holds, therefore, that the executor should be allowed in his account for the principal of the tax he has paid, together with interest collected thereon under the statute for one year; and that as he is bound to pay this tax on the legacies at the expiration of the year he cannot be allowed any interest he has paid thereon after that period. The executor is personally chargeable with the whole penalty, and is not entitled to be allowed in the accounting for the excess interest or penalty. *Wyckoff v. O'Neil*, 72 N. J. Eq. 880, 67 A. 32.

S. 6 provides for the deduction of the tax; section 7 gives the executors power to sell property to pay the tax; sections 8 and 9 cover the payment of the tax.

### **Executor's Accounts should Show Inheritance Tax Payments.**

It was suggested by the lower court that the amount of the inheritance tax paid did not enter into the executor's account, as the amount of the tax on each legacy should be deducted from the legacy itself in settlement with the legatee.

The court of appeals holds, however, that the executor should show in his account every payment made by him as executor. The distribution of these payments among the various legatees is a matter of subsequent arrangement between him and them when he comes to pay the legacies. In settling his account it would be better, doubtless, if the accountant should distribute the sum total of the inheritance taxes, showing just how much was chargeable against each legacy. But the failure to so distribute is no reason for disallowing the items in the account. *Wyckoff v. O'Neil*, 72 N. J. Eq. 880, 67 A. 32.

#### **Refund to Pay Debts.**

S. 10. And be it enacted, That whenever any debts shall be proven against the estate of a decedent, after the payment of legacies or distribution of property from which the said tax has been deducted, or upon which it has been paid, and a refund is made by the legatee, devisee, heir or next of kin, a proportion of the tax so paid shall be repaid to him by the executor, administrator or trustee, if the said tax has not been paid to the state treasurer, or by them if it has been so paid.

Section 10, which authorizes a refund of taxes where the legatee has been obliged to refund part of the legacy to pay debts, shows that it is the legacy that is taxed and not the estate, and shows further, that an insolvent estate is not liable to the tax. *Neilson v. Russell* (N. J. Errors and Appeals), 71 A. 286, reversing 69 A. 476.

#### **Foreign Executor or Administrator.**

S. 11. And be it enacted, That whenever any foreign executor or administrator shall assign or transfer any stocks or loans in this state, standing in the name of a decedent, or in trust for a decedent, which shall be liable to the said tax, such tax shall be paid to the state treasurer on the transfer thereof, otherwise the corporation permitting such transfer shall become liable to pay such tax; provided, that such corporation has knowledge before such transfer that said stocks or loans are liable to said tax.

The claim of the state of New Jersey to tax non-residents' stock in New Jersey corporations is not helped by the statute of 1894, c. 210, s. 11, which applies only to the case of stock which is liable to the tax and is intended to afford a means of collection of a tax imposed by other sections and is not of itself intended to impose a tax. *Neilson v. Russell* (N. J. Errors and Appeals), 71 A. 286, reversing 69 A. 476.

S. 12 provides that taxes erroneously paid shall be refunded.

**Appraisal.**

S. 13. And be it enacted, That in order to fix the value of property of persons whose estates shall be subject to the payment of said tax, the surrogate or register of the prerogative court, on the application of any interested party, or upon his own motion, shall appoint some competent person as appraiser as often as, and whenever occasion may require, whose duty it shall be forthwith to give such notice by mail and to such persons as the surrogate or register of the prerogative court may by order direct, of the time and place he will appraise such property, and at such time and place to appraise the same at its fair market value, and make a report thereof in writing to said surrogate or register of the prerogative court, together with such other facts in relation thereto as said surrogate or register of the prerogative court may by order require, to be filed in the office of such surrogate or register of the prerogative court, and from this report the said surrogate or register of the prerogative court shall forthwith assess and fix the then cash value of all estates, annuities and life estates, or term of years growing out of said estates, and the tax to which the same is liable, and shall immediately give notice thereof by mail to the state comptroller and to all parties known to be interested therein; any person or persons dissatisfied with said appraisement or assessment may appeal therefrom to the ordinary or orphans' court of the proper county, within sixty days after the making and filing of such assessment, on paying or giving security, approved by the ordinary or orphans' court, to pay all costs, together with whatever tax shall be fixed by said court; the said appraiser shall be paid by the state treasurer on the warrant of the comptroller, on the certificate of the ordinary or surrogate, duly filed with the comptroller, at the rate of three dollars per day for every day actually and necessarily employed in said appraisement, together with his actual and necessary traveling expenses.

Under the New Jersey statute of 1894, section 13, the surrogate upon the application of an interested party may appoint an appraiser who may assess the tax. *Dixon v. Russell*, 78 N. J. L. 296, 73 A. 51.

**Valuation on Death.**

Where property passed to the collateral relatives by will, which speaks from the death of the testatrix, the property passed upon the death of the testatrix and was not suspended or postponed for want of probate. The tax is to be assessed as of the date of the inheritance, and the amount of the assessment is not affected by the increase or depreciation of the estate between the death of the testatrix and the probate of the will, which in cases of contest may cover a long period, for the act provides that all taxes imposed "shall be due and payable at the death of the testator," under New Jersey St. 1894, c. 210, s. 4. *In re Hartman*, 70 N. J. Eq. 664, 668, 62 A. 560.

### Valuation of Annuities.

Where the testator by a codicil directed his residuary legatee to pay a certain person a thousand dollars a year during her life, this is a charge upon the residuary estate, and therefore was property which passed to the annuitant. The value may properly be fixed by a determination of its worth at testator's decease considered in the light of the legatee's probability of life. *In re Rothschild*, 72 N. J. Eq. 425, 65 A. 1118, 71 N. J. Eq. 210, affirming 71 N. J. Eq. 210.

### Failure to Appeal not a Bar.

Under N. J. St. 1894 (Gen. Sts. p. 3339) the surrogate appointed an appraiser under the provisions of section 13 of this act and fixed the value of the estate and gave notice thereof in the manner prescribed by that section, and no appeal was made either to the ordinary or to the orphan's court within sixty days after the surrogate's assessment was made and found. The tax was not paid and the state controller thereupon notified the prosecutor of the county of the failure to pay and the prosecutor thereupon proceeded under the provisions of section 17 of the act to procure a decree from the orphan's court under the power conferred upon it by the provisions of section 16. It was contended that the orphan's court had no jurisdiction to entertain the question of liability, because the parties interested were debarred from raising that question by their failure to appeal from the surrogate's assessment within the time limited by the terms of section 13. The court, however, construes section 16 as empowering the orphan's court to determine whether the tax should be paid and to enforce its decree, and holds that a party interested must be deemed to be permitted to interpose any objection to such a decree. The court distinguishes *In re Wolfe*, 137 N. Y. 205, construing section 15 of the New York act, which is in substantially identical terms with section 13 of the New Jersey statute, on the ground that the New York act in section 15 expressly confers on the surrogate's court jurisdiction "to hear and determine all questions in relation to the tax arising under the provisions" of the act. The New Jersey statute, however, confers no such jurisdiction on the surrogate, but section 15 of the New Jersey act expressly confers that jurisdiction upon the ordinary or orphan's court. *In re Vineland Historical and Antiquarian Society*, 66 N. J. Eq. 291, 56 A. 1039.

Section 14 forbids an appraiser from taking any fee or reward from an executor.

**Jurisdiction of Ordinary or Orphan's Court.**

S. 15. And be it enacted, That the ordinary or the orphan's court in the county in which the real property is situate of a decedent who was not a resident of the state, or in the county of which the decedent was a resident at the time of his death, shall have jurisdiction to hear and determine all questions in relation to the tax arising under the provisions of this act.

Sections 16-22 provide for the collection and payment of the tax.

**Record on Appeal.**

The record for the Court of Appeals should print the will of the decedent. *Astor v. State* (N. J. 1903) 72 A. 78.

**Repeal.**

S. 23. And be it enacted, That all acts or parts of acts inconsistent with the provisions of this act are hereby repealed, except so far as herein re-enacted; but nothing in this repealer shall affect or impair the lien of any taxes heretofore assessed, or due and payable, or any remedies for the collection of the same, or to surrender any remedies, powers, rights or privileges acquired by the state under any act heretofore passed, or to relieve any person or corporation from any penalty imposed by said acts; provided, however, that the exception in the first section hereof in favor of churches, hospitals, orphan asylums, public libraries, bible and tract societies, and all religious, benevolent and charitable institutions and organizations, shall be construed and held to apply to any and all bequests, devises and legacies heretofore made, in trust or otherwise, to or in favor of such institutions, or any of them, in all cases where said tax shall not have been paid prior to the passage of this act.

**Effect of Saving Clause in Repeal.**

N. J. St. 1893, c. 210, was superseded and repealed by the statute of 1894, p. 318. "If the repealer was without any saving clause, there could be no doubt that the tax in question would be invalid, because such a repealer would abolish the machinery by which the assessment could be laid, and such special taxes as these can only be imposed by the machinery provided by the legislature.

But the repealer of the act of 1893 was not without a saving clause. The repealer was of all acts or parts of acts inconsistent with the provisions of the act of 1894 "except so far as herein re-enacted," and the provisions for the imposition of the assessment were all practically re-enacted. Besides, by the provisions of section 23, in which the repealer is contained, there was a saving clause. The language of it is not happily chosen, but, in my judgment, the proper construction is that the repealer should not be considered "to surrender any remedies, powers, rights or privileges acquired by

the state under any act heretofore passed." Under the construction I have given to the act of 1893, a right was acquired by the state to impose a tax upon the interest acquired by one who was appointed by the will of the life beneficiary to receive a share of a fund under a power of appointment. By that act the state acquired power to enforce the right thus obtained. The act further provided remedies for the enforcement of that right. When the legislature saved the rights and powers and remedies of the state under previous acts, I think the repealer in no respect deprived the state of power to enforce such a tax." Therefore the state had power to collect the tax where the testator died August 26, 1893, leaving a power of appointment to the life tenant who died March 25, 1895, leaving a will exercising the power of appointment. The court holds that the tax on this power of appointment can be collected under the statute of 1893. *Hoyt v. Hancock*, 65 N. J. Eq. 688, 55 A. 1004.

## AMENDMENTS.

### Exemptions.

As to the act of 1898, see *post* p. 761.

### Counsel for State Comptroller.

N. J. St. 1902, c. 217, approved April 9, 1902, amends N. J. St. 1894, c. 210, s. 17, by authorizing the state comptroller to retain counsel to represent him in proceedings to collect the inheritance tax.

### Remainders.

N. J. St. 1903, c. 90, supplements N. J. St. 1894, by providing that all remainder interests shall be appraised and taxed immediately after the death of the testator or grantor and such tax shall remain a lien until paid, but the tax shall not become due or payable until the remaindermen are entitled to possession.

### The Statutes of 1906.

N. J. St. 1906, c. 227, approved May 15, 1906, provides that the state comptroller may contract to pay a contingent fee to persons who give information in regard to the inheritance tax.

N. J. St. 1906, c. 228. Approved May 15, 1906.

AN ACT TO AMEND AN ACT ENTITLED, "An act to tax intestates' estates, gifts, legacies, devises and collateral inheritance in certain cases," approved May fifteenth, one thousand eight hundred and ninety-four.



Be it enacted by the Senate and General Assembly of the State of New Jersey:

1. Section one of the act to which this act is amendatory be and the same hereby is amended to read as follows:

1. A tax shall be and is hereby imposed upon the transfer of any property, real or personal, of the value of five hundred dollars or over, or of any interest therein or income therefrom, in trust or otherwise, to persons or corporations, in the following cases:

*First.* When the transfer is by will or by the intestate laws of this state from any person dying seized or possessed of the property while a resident of the state.

*Second.* When the transfer is by will or intestate law, of property within the state, and the decedent was a non-resident of the state at the time of his death.

*Third.* When the transfer is of property made by a resident or by a non-resident, when such non-resident's property is within this state, by deed, grant, bargain, sale or gift made in contemplation of the death of the grantor, vendor or donor, or intended to take effect, in possession or enjoyment, at or after such death. Such tax shall also be imposed when any such person or corporation becomes beneficially entitled, in possession or expectancy, to any property or the income thereof by any such transfer, whether made before or after the passage of this act. Such tax shall be at the rate of five per centum upon the clear market value of such property, to be paid to the treasurer of the state of New Jersey, for the use of the state, and all administrators, executors and trustees shall be liable for any and all such taxes until the same shall have been paid as hereinafter directed.

All property passing to churches, hospitals and orphan asylums, public libraries, Bible and tract societies, and all religious, benevolent and charitable institutions and organizations, or to a father, mother, husband, wife, child, brother or sister, or lineal descendant born in lawful wedlock, or the wife or widow of a son, or the husband of a daughter, shall be exempt from the payment of taxes under this act, but no other exemption of any kind shall be allowed.

This statute repealed the act of 1898. As to exemptions, see *post*, p. 759.

After the decision in *Neilson v. Russell* (71 A. 286), the legislature passed New Jersey statute 1906, Public Laws, c. 228, providing for the imposition of a tax "when the transfer is by will or intestate law of property within the state and the decedent was a non-resident of the state at the time of his death." *Dixon v. Russell*, 78 N. J. L. 296, 73 A. 51, reversed in 79 N. J. L. 490.

### **Void as to New Jersey Stocks of Non-Resident.**

The act of 1906 intended to substitute a tax on the transfer of property which is the subject of a legacy for a tax on the legacy itself. This purpose was not expressed in the title and the statute is therefore void as applied to New Jersey stocks belonging to a non-resident. *Dixon v. Russell*, 79 N. J. L. 490 A., reversing 78 N. J. L. 296, 73 A. 51. This case was followed in *Tilford v. Dickinson*, 79 N. J. L. 302, 79 A. 1119, reversing 75 A. 574.

**N. J. St. 1906, c. 228.**

S. 4. All taxes imposed by this act shall be due and payable at the death of the testator, grantor or intestate, as the case may be, unless otherwise provided for and if the same are paid within one year a discount of five per centum shall be allowed and deducted from such taxes; if not paid within one year from the date of the death of the testator, grantor or intestate, as the case may be, such tax shall bear interest at the rate of ten per centum per annum, to be computed from the expiration of one year from the date of the death of such testator, grantor, or intestate, until the same is paid, and in all cases where the executors, administrators or trustees do not pay such tax within one year from the death of the decedent they shall be required to give a bond, in the form and to the effect prescribed in section two of the act to which this act is amendatory, for the payment of such tax together with interest.

**Jurisdiction of Courts.**

N. J. St. 1908, c. 131, approved April 9, 1908, amended N. J. St. 1894, c. 210, s. 15, to read as follows:

"That the ordinary, or the orphans' court of the county in which the real property of a non-resident decedent is situate, or the orphans' court of the county in which the decedent was a resident at the time of his death, or in case of a non-resident decedent leaving no real property within this state, the orphans' court of the county in which the surrogate shall first assume jurisdiction, shall have jurisdiction to hear and determine all questions in relation to a tax arising under the provisions of this act."

**THE STATUTES OF 1909.****Title of Statute Amended.**

N. J. St. 1909, c. 209, approved April 20, 1909, amends N. J. St. 1894, c. 210, entitled "An act to tax intestates' estates, gifts, legacies, devises and collateral inheritance, in certain cases," to read "An act to tax the transfer of property of resident and non-resident decedents by devise, bequest, descent, distribution by statute, gift, deed, grant, bargain and sale, in certain cases."

These statutes of April 20, 1909, did not apply to the estate of one who died March 9, 1909. *Tilford v. Dickinson*, 79 N. J. L. 574, 79 A. 1119, reversing 75 A. 574.

**Disposition of Receipts.**

N. J. St. 1909, c. 238, approved April 21, 1909, requires the state treasurer to pay to the county five per cent of the transfer tax collected from property of resident decedents in that county, provided the N. J. St. 1909, c. 228, became law.

N. J. St. 1909, c. 228, approved April 20, 1909, is entitled "An act to tax the transfer of property, of resident and non-resident decedents, by devise, bequest, descent, distribution by statute, gift, deed, grant, bargain and sale, in certain cases," and provides a complete inheritance tax system.

This statute did not apply to the estate of one who died before its passage. *Tilford v. Dickinson*, 79 N. J. L. 574, 79 A. 1119, reversing 79 N. J. L. 302, 75 A. 574.

**N. J. St. 1909, c. 228.**

S. 28. All acts and parts of acts inconsistent with the provisions of this act are hereby repealed, but nothing in this repealer shall affect or impair the lien of any taxes heretofore assessed, or any tax due and payable, or any remedies for the collection of the same, or to surrender any remedies, powers, rights or privileges acquired by the state under any act heretofore passed, or to relieve any person or corporation from any penalty imposed by said acts.

**Property of Non-Resident.**

N. J. St. 1909, c. 31, provides for jurisdiction for the taxation of property in New Jersey of a non-resident decedent and authorizes the surrogate or the register wherever the decedent had real property, or, if he was not the owner of real property within the state, the surrogate of any county or the register of the prerogative court to exercise jurisdiction over the tax.

N. J. St. 1909, c. 159, amends N. J. St. 1894, c. 210, s. 11, by providing that the tax shall be paid on the transfer by a foreign executor, administrator or trustee of any stock or obligations in New Jersey standing in the name of a decedent or standing in the joint names of such decedent and one or more persons, or in trust for a decedent. Corporations are further required to give ten days' notice to the state comptroller of transfer of any such stock, which transfer must not take place without the consent of the comptroller, as any transfer without his consent makes the corporation liable to pay the tax and to a penalty of a thousand dollars. The chapter further provides: "On the transfer of property in this state of a non-resident decedent, if all or any part of the estate of such decedent, wherever situated, shall pass to persons or corporations who would have been taxable under this act, if such decedent had been a resident of this state such property located within this state shall be subject to a tax, which said tax shall bear the same ratio to the entire tax which the said estate of such decedent would have been subject to under this act if such non-resi-

dent decedent had been a resident of this state, as such property located in this state bears to the entire estate of such non-resident decedent, wherever situated; provided, that nothing in this clause contained shall apply to any specific bequest or devise of property in this state."

### EXEMPTIONS.

#### Exemptions Strictly Construed.

In *State v. N. Y. Meeting of Friends*, 61 N. J. Eq. 620, 48 A. 227, it was conceded that the legatee must come clearly within the words of the New Jersey exemption statute in order to obtain an exemption.

#### Burden on Legatee to Prove Exemptions.

The burden is upon a legatee to show its right to be exempted as a charitable society. In *re Vineland Historical and Antiquarian Society*, 66 N. J. Eq. 291, 56 A. 1039.

#### Exemption Confined to Domestic Corporations.

Exemptions in favor of charitable corporations under the New Jersey statute of 1894 do not cover corporations organized under the laws of states other than New Jersey. *Alfred University v. Hancock*, 69 N. J. Eq. 470, 46 A. 178. In *re Rothschild*, 72 N. J. Eq. 425, 65 A. 1118, affirming 71 N. J. Eq. 210.

Foreign corporations were exempted under the act of 1898 and not under the act of 1906. See *post*, pp. 761, 762.

#### Education is Charitable.

Alfred University, a school of learning, having an academic, collegiate and a theological department, is a corporation which has no capital stock and pays no dividends and is primarily supported by funds derived from public and private charity, together with tuition fees. Whatever is received is devoted to the object of sustaining the institution and increasing its benefits to the public by extending and improving its accommodations and diminishing its expenses. A gift to such an institution is a bequest to a charitable institution, and all gifts for the promotion of education are charitable in a legal sense where the elements of private gain are wanting and where the scheme is in part supported by public or private contributions. *Alfred University v. Hancock*, 69 N. J. Eq. 470, 46 A. 178.

To the same effect see *In re Vineland Historical and Antiquarian Society*, 66 N. J. Eq. 291, 56 A. 1039.

**Vineland Historical and Antiquarian Society is not Charitable. — Powers and not Practice Decisive of Liability.**

Under N. J. St. 1894, the Vineland Historical and Antiquarian Society is not a charitable institution within the meaning of the language used in section 1 of the act. This society was organized under the statute of 1875 to incorporate societies "for the promotion of learning." Gifts for educational purposes are gifts to valid charitable uses in New Jersey. But it is not enough to say that the institution was incorporated under the act for the promotion of learning or avows itself to be organized for the purpose of promoting learning. An institution claiming exemption on the ground of its educational character must disclose the objects to which it is bound to devote its property. It must appear that the objects disclosed have some educational value and that the benefits and advantages of the institution in respect to such objects are open to the general public, or at least to such persons as may seek them. The society in question, however, has for its object to collect and preserve historical and current accounts of events and other matters connected with the interests of Vineland; and the court finds that the society has failed to show that such a collection is of educational value. "Such a collection would not resemble a library, but rather a museum."

It also appeared that the legacy given to the society was given without any limitation or condition, and therefore imposed no duty on the society except that which may be inferred from the terms contained in the organization of the society as a corporation. The mere fact, therefore, that the society now opens its collection to the public would not bind the society to continue to do so. *In re Vineland Historical and Antiquarian Society*, 66 N. J. Eq. 291, 56 A. 1039.

Where a corporation is organized under a statute which permits incorporation for various objects, some of which would render it exempt from taxation, the obvious test of exemption is not incorporation under an act permitting incorporation for objects that would exempt, but incorporation for objects that entitle to exemption. The corporation is not exempt unless it is actually incorporated for objects which entitle it to be exempt. *In re Rothschild*, 72 N. J. Eq. 425, 65 A. 1118, affirming 71 N. J. Eq. 210.

## THE AMENDMENT OF 1898.

N. J. St. 1898, c. 62.

S. 1. All gifts, grants, legacies, bequests and devises, whether by will, deed or otherwise, of real or personal property, by residents or citizens of this state, to any Bible or tract society, or religious institution, boards of the church or organizations thereof, in trust or otherwise, not confined in their operations and benefactions to local or state purposes, but for the general good of the people interested therein, of the United States or of foreign lands, as the board of home and foreign missions of various church denominations, shall not be taxed under said act, whether said societies, religious institutions or boards aforesaid, are organized under the laws of this state, or incorporated and organized under the laws of some other state.

S. 2. This provision of this supplement and its exemptions shall apply to all gifts, grants, legacies, bequests and devises aforesaid on which the tax has not been assessed and paid.

### Religious Institutions.

Under the act of 1898 the Union for Ministerial Education, whose purpose is to assist in educating for the ministry suitable men, is a religious institution; so the Baptist Education Society, the object of which is to furnish the means for instruction to young men of personal piety, who have a call to the ministry, and the American Baptist Home Missionary Society, whose object is to promote the preaching of the gospel in North America, are all religious institutions. As the first two are not limited to students of any particular locality, this is certainly not local in its nature, and the board of missions is clearly of a general purpose also. Therefore, all three of these institutions are exempt from payment of the collateral inheritance tax. *In re Jones* (N. J. 1907), 67 A. 1035, affirmed 70 A. 1101.

### A College with a Theological Department is not a Religious Institution.

The court finds that Alfred University is not included within the exemption of the act of 1898, as it is not a Bible or tract society, nor can it be regarded as a religious institution, although it has a theological department which is an adjunct of the principal departments of the institution which are academic and collegiate. If the theological department is to be regarded as religious, the two others are purely secular. An institution of such blended secular and religious qualities can in no sense be classed as a religious institution. *Alfred University v. Hancock*, 69 N. J. Eq. 470, 46 A. 178.

**The New York Yearly Meeting of Friends Exempt.**

The will of the decedent made a bequest to the New York Yearly Meeting of Friends. The court finds that this institution is the general governing body of the Society of Friends and has primary control over the missionary purposes and general benefactions of such minor bodies as act by its authority. Funds are set apart for the work among the Indians and for the benefit of former slaves in the south. It has missions in Mexico, North Carolina, Palestine and Japan and China. Its membership is not confined to the state of New York. It has meetings organized in Vermont and in Canada, and membership in these meetings is not confined to state lines. The court holds that there is no difference between the methods of these meetings and the methods of the boards of home and foreign missions of the various religious organizations. Therefore, the Society of Friends comes clearly within the statutory exemption of the act of 1898. *State v. N. Y. Meeting of Friends*, 61 N. J. Eq. 620, 48 A. 227.

**Foreign Religious Corporations not Exempt under the Act of 1906.**

N. J. St. 1906, Public Laws, p. 432, which covers an exemption to religious corporations, repeals by implication the exemption given under the New Jersey Public Laws of 1898, p. 106, and therefore, under the statute of 1906, a foreign religious corporation is not exempt from the inheritance tax. *In re Gopsill* (N. J. Prerog.), 77 A. 793.

Public monuments or memorials are exempt under the act of 1910, *post* p. 771.

**THE PRESENT ACT.**

N. J. St. 1909, c. 228.

AN ACT TO TAX THE TRANSFER OF PROPERTY, OF RESIDENT AND NON-RESIDENT DECEDENTS, by devise, bequest, descent, distribution by statute, gift, deed, grant, bargain and sale, in certain cases. As to title to statute see notes to the Acts of 1892, 1893, 1894 and 1906. *ante* p. 000.

**Transfers Taxable. — Rate. — Exemptions.**

1. A tax shall be and is hereby imposed upon the transfer of any property, real or personal, of the value of five hundred dollars or over or any interest therein or income therefrom, in trust or otherwise, to persons or corporations, in the following cases:

*First.* When the transfer is by will or by the intestate laws of this state from any person dying seized or possessed of the property while a resident of the state.

*Second.* When the transfer is by will or intestate law, of property within the state, and the decedent was a non-resident of the state at the time of his death.

*Third.* When the transfer is of property made by a resident or by a non-resident, when such non-resident's property is within this state, by deed, grant, bargain, sale or gift made in contemplation of the death of the grantor, vendor or donor, or intended to take effect, in possession or enjoyment, at or after such death.

*Fourth.* When any person or corporation comes into the possession or enjoyment, by a transfer from a resident or non-resident decedent when such non-resident decedent's property is within this state, of an estate in expectancy of any kind or character which is contingent or defeasible, transferred by an instrument taking effect after the passage of this act, or of any property transferred pursuant to a power of appointment contained in any instrument taking effect after the passage of this act.

All taxes imposed by this act shall be at the rate of five per centum upon the clear market value of such property, to be paid to the treasurer of the state of New Jersey, for the use of said state, and all administrators, executors, trustees, grantees, donees, or vendees, shall be personally liable for any and all such taxes until the same shall have been paid as hereinafter directed, for which an action of debt shall lie in the name of the state of New Jersey.

Property passing to churches, hospitals and orphan asylums, public libraries, bible and tract societies, religious, benevolent and charitable institutions and organizations, or to a father, mother, husband, wife, child or children, or lineal descendant born in lawful wedlock, brother or sister, or the wife or widow of a son, or the husband of a daughter, shall be exempt from taxation under this act, but no other exemption of any kind shall be allowed.

[See notes to the Acts of 1892, 1893, 1894 and 1906, *ante*, pp. 743, 744, 746, 756. As to exemptions see *ante*, p. 759.]

#### **Particular Estate and Remainder.**

2. When any persons shall bequeath or devise, convey, grant, sell or give any property or interest therein, or income therefrom, to any person or corporation for life or for a term of years, and a vested interest in the remainder or corpus of said property to any person, or to any body politic or corporate, the whole of said property, so transferred as aforesaid, shall be appraised immediately at its clear market value, and after deducting from such appraisement the value of the estate for life or estate for a term of years, the tax on such life estate or for a term of years, if taxable under this act, shall be immediately levied and assessed, and the tax on the remainder of the property so as aforesaid transferred, if such property is taxable under this act, shall be levied and assessed immediately, but such tax shall not become due or payable until the time or period arrives when said remainderman, or his representatives, shall become entitled to the actual possession or enjoyment of such property, and shall then become due and payable immediately, and, if not paid within thirty days, interest at the rate of ten per centum per annum shall be charged and collected from the time when said tax became due and payable. If the property passing to a remainderman, as hereinabove provided, be personal property, such remainderman, or the executor or trustee of the estate, shall give a bond to the state of New Jersey in double the amount of the tax on the property of such remainderman, conditioned to pay said



tax, and any interest which may fall due thereon, said bond to be approved as to the form and sufficiency thereof by the attorney general of this state, and any executor or trustee who shall assign or deliver to any such remainderman any personal property liable to a tax under this act, unless a bond be given as specified in this section, or said tax be paid, shall be personally liable for said tax and all interest due thereon, which liability may be enforced in an action of debt in the name of the state of New Jersey.

[See notes to the Act of 1893, *ante*, p. 744.]

**When Tax Accrues in Various Cases. — Duties of Executors, etc. — Compromise of Tax.**

3. Where an instrument creates an executory devise, or an estate in expectancy of any kind or character which is contingent or defeasible, the property transferred in accordance with such executory devise or the property in which such contingent or defeasible interest is created by any such instrument, shall be appraised immediately at its clear market value, and after deducting from such appraisement the value of the life estate, or estate for a term of years, created by such instrument, the tax on such life estate, or estate for a term of years, if taxable under this act, shall be immediately levied and assessed, but the tax on the balance of said appraised value of such estate shall not be levied or assessed until the person or corporation entitled to said property comes into the beneficial enjoyment, seizin or possession thereof, and if taxable, shall then be taxed. Where an instrument creates a power of appointment, the life estate, or estate for a term of years, created and transferred by such instrument, if taxable, shall be immediately appraised and taxed at its clear market value, but the appraisal and taxation of the interest or interests in remainder to be disposed of by the donee of power shall be suspended until the exercise of the power of appointment, and shall then be taxed, if taxable, at the clear market value of such property, which value of such property shall be determined as of the date at the death of the creator of the power.

A tax on an estate for life or on an estate for a term of years, levied and assessed as directed in this section, shall be due and payable as provided in section five of this act. All other taxes levied and assessed as directed in this section and all taxes on any property which may be transferred to the residuary legatees, heir or next of kin of any decedent, or which may revert to the heir of any decedent by reason of the failure of any contingency upon which any remainder may be limited, shall be due and payable within two months after the person entitled to the property shall come into the enjoyment, seizin or possession thereof, and if not paid shall thenceforth bear interest at the rate of ten per centum per annum until paid. No executor or trustee shall turn over any property of an estate mentioned in this section until the tax due thereon, and interest, if any, shall have been paid to the treasurer of this state, and any executor or trustee who shall turn over any property prior to the payment of the tax due thereon, together with interest, shall be personally liable for such tax and interest, which said liability may be enforced by an action of debt in the name of the state of New Jersey.

The comptroller of the treasury of this state, by and with the consent of the attorney general, expressed in writing, is hereby empowered and authorized to enter into an agreement with the executors or trustees of any estate in which remainders or expectant estates have been of such a nature, or so disposed and cir-

cumstanced that the taxes therein were held not presently payable, or where the interest of the legatees or devisees were not ascertainable at the death of the testator, grantor, donor or vendor, and to compound such taxes upon such terms as may be deemed equitable and expedient; and to grant discharge to said executors and trustees upon the payment of the taxes provided for in such composition; *provided, however*, that no such composition shall be conclusive in favor of said executors or trustees as against the interest of such *cestuis que* trust as may possess either present rights of enjoyment, or fixed, absolute or indefeasible rights of future enjoyment, or of such as would possess such rights in the event of the immediate termination of particular estates, unless they consent thereto, either personally, when competent, or by guardian or committee.

[See note to the Act of 1894, *ante*, p. 750.]

#### **Gift to Executors in Lieu of Commissions.**

4. Whenever a decedent appoints or names one or more executors or trustees, and makes a bequest or devise of property to them in lieu of their commissions or allowances, which otherwise would be liable to said tax, or appoints them his residuary legatees, and said bequest, devise or residuary legacy exceeds what would be a reasonable compensation for their services, such excess shall be liable to said tax, and the ordinary, or the orphans' court, having jurisdiction in the case, shall fix such compensation.

#### **When Tax Due. — Discount Penalty. — Lien.**

5. All taxes imposed by this act shall be due and payable at the death of the testator, intestate, grantor, donor, vendor, unless in this act otherwise provided, and if the same are paid within one year a discount of five per centum shall be allowed and deducted from such taxes; if not paid within one year from the date of the death of the testator, intestate, grantor, donor or vendor, such tax shall bear interest at the rate of ten per centum per annum, to be computed from the expiration of one year from the date of the death of such testator, intestate, grantor, donor or vendor; until the same is paid, and in all cases where the executors, administrators, grantees, donees, vendees or trustees do not pay such tax within one year from the death of the decedent they shall be required to give a bond, in the form and effect prescribed in section two of this act, for the payment of such tax, together with interest.

All taxes levied and assessed under this act on the transfer of any real property shall be and remain a lien on said real property until paid.

#### **When Penalty not Enforced.**

6. The penalty of ten per centum per annum imposed by section five hereof for the non-payment of said tax shall not be charged where in cases by reason of claims made upon the estate, necessary litigation or other unavoidable cause of delay the estate of any decedent, or a part thereof, cannot be settled at the end of a year from the death of the decedent, and in such cases only six per centum per annum shall be charged upon the said tax from the expiration of such year until the cause of such delay is removed.

#### **Deduction of Tax.**

7. Any administrator, executor or trustee having in charge or trust any legacy or property for distribution, subject to said tax, shall deduct the tax

tax, and any interest which may fall due thereon, said bond to be approved as to the form and sufficiency thereof by the attorney general of this state, and any executor or trustee who shall assign or deliver to any such remainderman any personal property liable to a tax under this act, unless a bond be given as specified in this section, or said tax be paid, shall be personally liable for said tax and all interest due thereon, which liability may be enforced in an action of debt in the name of the state of New Jersey.

[See notes to the Act of 1893, *ante*, p. 744.]

**When Tax Accrues in Various Cases. — Duties of Executors, etc. — Compromise of Tax.**

3. Where an instrument creates an executory devise, or an estate in expectancy of any kind or character which is contingent or defeasible, the property transferred in accordance with such executory devise or the property in which such contingent or defeasible interest is created by any such instrument, shall be appraised immediately at its clear market value, and after deducting from such appraisement the value of the life estate, or estate for a term of years, created by such instrument, the tax on such life estate, or estate for a term of years, if taxable under this act, shall be immediately levied and assessed, but the tax on the balance of said appraised value of such estate shall not be levied or assessed until the person or corporation entitled to said property comes into the beneficial enjoyment, seizin or possession thereof, and if taxable, shall then be taxed. Where an instrument creates a power of appointment, the life estate, or estate for a term of years, created and transferred by such instrument, if taxable, shall be immediately appraised and taxed at its clear market value, but the appraisal and taxation of the interest or interests in remainder to be disposed of by the donee of power shall be suspended until the exercise of the power of appointment, and shall then be taxed, if taxable, at the clear market value of such property, which value of such property shall be determined as of the date at the death of the creator of the power.

A tax on an estate for life or on an estate for a term of years, levied and assessed as directed in this section, shall be due and payable as provided in section five of this act. All other taxes levied and assessed as directed in this section and all taxes on any property which may be transferred to the residuary legatees, heir or next of kin of any decedent, or which may revert to the heir of any decedent by reason of the failure of any contingency upon which any remainder may be limited, shall be due and payable within two months after the person entitled to the property shall come into the enjoyment, seizin or possession thereof, and if not paid shall thenceforth bear interest at the rate of ten per centum per annum until paid. No executor or trustee shall turn over any property of an estate mentioned in this section until the tax due thereon, and interest, if any, shall have been paid to the treasurer of this state, and any executor or trustee who shall turn over any property prior to the payment of the tax due thereon, together with interest, shall be personally liable for such tax and interest, which said liability may be enforced by an action of debt in the name of the state of New Jersey.

The comptroller of the treasury of this state, by and with the consent of the attorney general, expressed in writing, is hereby empowered and authorized to enter into an agreement with the executors or trustees of any estate in which remainders or expectant estates have been of such a nature, or so disposed and cir-

cumstanced that the taxes therein were held not presently payable, or where the interest of the legatees or devisees were not ascertainable at the death of the testator, grantor, donor or vendor, and to compound such taxes upon such terms as may be deemed equitable and expedient; and to grant discharge to said executors and trustees upon the payment of the taxes provided for in such composition; *provided, however*, that no such composition shall be conclusive in favor of said executors or trustees as against the interest of such *cestuis que* trust as may possess either present rights of enjoyment, or fixed, absolute or indefeasible rights of future enjoyment, or of such as would possess such rights in the event of the immediate termination of particular estates, unless they consent thereto, either personally, when competent, or by guardian or committee.

[See note to the Act of 1894, *ante*, p. 750.]

#### **Gift to Executors in Lieu of Commissions.**

4. Whenever a decedent appoints or names one or more executors or trustees, and makes a bequest or devise of property to them in lieu of their commissions or allowances, which otherwise would be liable to said tax, or appoints them his residuary legatees, and said bequest, devise or residuary legacy exceeds what would be a reasonable compensation for their services, such excess shall be liable to said tax, and the ordinary, or the orphans' court, having jurisdiction in the case, shall fix such compensation.

#### **When Tax Due. — Discount Penalty. — Lien.**

5. All taxes imposed by this act shall be due and payable at the death of the testator, intestate, grantor, donor, vendor, unless in this act otherwise provided, and if the same are paid within one year a discount of five per centum shall be allowed and deducted from such taxes; if not paid within one year from the date of the death of the testator, intestate, grantor, donor or vendor, such tax shall bear interest at the rate of ten per centum per annum, to be computed from the expiration of one year from the date of the death of such testator, intestate, grantor, donor or vendor; until the same is paid, and in all cases where the executors, administrators, grantees, donees, vendees or trustees do not pay such tax within one year from the death of the decedent they shall be required to give a bond, in the form and effect prescribed in section two of this act, for the payment of such tax, together with interest.

All taxes levied and assessed under this act on the transfer of any real property shall be and remain a lien on said real property until paid.

#### **When Penalty not Enforced.**

6. The penalty of ten per centum per annum imposed by section five hereof for the non-payment of said tax shall not be charged where in cases by reason of claims made upon the estate, necessary litigation or other unavoidable cause of delay the estate of any decedent, or a part thereof, cannot be settled at the end of a year from the death of the decedent, and in such cases only six per centum per annum shall be charged upon the said tax from the expiration of such year until the cause of such delay is removed.

#### **Deduction of Tax.**

7. Any administrator, executor or trustee having in charge or trust any legacy or property for distribution, subject to said tax, shall deduct the tax

therefrom, or if the legacy or property be not money he shall collect the tax thereon upon the appraised value thereof from the legatee or persons entitled to such property, and he shall not deliver or be compelled to deliver any specific legacy or property subject to tax to any person until he shall have collected the tax thereon, and whenever any such legacy shall be charged upon or payable out of real estate, the heir or devisee, before paying the same, shall deduct said tax therefrom and pay the same to the executor, administrator or trustee, and the payment thereof shall be enforced by the executor, administrator or trustee in the same manner that the payment of such legacy might be enforced; if, however, such legacy be given in money to any person for a limited period he shall retain the tax upon the whole amount, but if it be not in money he shall make application to the court having jurisdiction of his accounts to make an apportionment, if the case require it, of the sum to be paid into his hands by such legatees, and for such further order relative thereto as the case may require.

#### **Power of Sale.**

8. All executors, administrators and trustees shall have full power to sell so much of the property of the decedent as will enable them to pay said tax in the same manner as they may be enabled by law to do for the payment of debts of their testators and intestates, and the amount of said tax shall be paid as hereinafter directed.

#### **Payment. — Receipts. — Records.**

9. Any sum of money retained by an executor, administrator or trustee, or paid into his hands for any tax due under this act, shall be paid by him within thirty days thereafter, to the treasurer of this state, and the person so paying shall be entitled to receive a receipt signed by the treasurer of this state and countersigned by the comptroller thereof, for such payment, which receipt shall be a proper voucher in the settlement of the account of any such executor, administrator or trustee; such person so paying, in addition to the foregoing receipt, shall, if the tax be paid in part or in whole upon real property, be entitled to receive an additional receipt, signed by the treasurer of this state and countersigned by the comptroller thereof, in which shall be designated upon what real property, if any, said tax has been paid, and by whom paid, and whether or not it is in full of said tax on said real property, and said receipt may be recorded in the clerk's office of the county in which said real property is situated, in a book which shall be kept by said clerk for such purpose and labelled "collateral tax."

[See notes to the Act of 1894, *ante*, p. 750.]

#### **Information as to Real Estate.**

10. Whenever any of the real estate of which any decedent may die seized shall pass to any body politic or corporate, or to any person other than the father, mother, husband, wife, child, or lineal descendant born in lawful wedlock, brother or sister, wife or widow of a son, or husband of a daughter, or in trust for them, or some of them, it shall be the duty of the executors, administrators or trustees of such decedent to give information thereof in writing to the comptroller of the treasury of this state within six months after they undertake the execution of their respective duties, or, if the fact be not known to them within that period, then within one month after the same shall have come to their knowledge.

**Refund.**

11. Whenever any debts shall be proven against the estate of the decedent, after the payment of the legacies or distribution of property from which the said tax has been deducted, or upon which it has been paid, and a refund is made by the legatee, devisee, heir, or next of kin, a proportion of the tax so paid shall be repaid to him by the executor, administrator or trustee, if the said tax has not been paid to the state treasurer, or by the state treasurer, if the same has been paid into the state treasury.

[See notes to the Act of 1894, *ante*, p. 751.]

**Transfer by Foreign Executor. — Property of Non-Resident.**

12. If a foreign executor, administrator or trustee shall assign or transfer any stock or obligations in this state standing in the name of a decedent, or standing in the joint names of such a decedent and one or more persons, or in trust for a decedent, liable to any such tax, the tax shall be paid to the treasurer of this state on the transfer thereof. No corporation of this state shall transfer any such stock, unless notice of the time of such intended transfer be served upon the comptroller of the treasury of this state at least ten days prior to such transfer, nor until said comptroller shall consent thereto in writing. Any corporation making such a transfer without first obtaining the consent of the comptroller of the treasury as aforesaid shall be liable for the amount of any tax which may thereafter be assessed on account of the transfer of such stock, together with the interest thereon, and in addition thereto a penalty of one thousand dollars, which liability for such tax and interest and said penalty herein prescribed may be enforced in an action of debt in the name of the state of New Jersey.

On the transfer of property in this state of a non-resident decedent, if all or any part of the estate of such decedent wherever situated shall pass to persons or corporations who would have been taxable under this act, if such decedent had been a resident of this state, such property located within this state shall be subject to a tax, which said tax shall bear the same ratio to the entire tax which the said estate of such decedent would have been subject to under this act if such non-resident decedent had been a resident of this state, as such property located in this state bears to the entire estate of such non-resident decedent wherever situated; provided, that nothing in this clause contained shall apply to any specific bequest or devise of any property in this state.

[See notes to the Act of 1894, *ante*, p. 751.]

**Investigation by State Comptroller.**

13. The comptroller of the treasury of this state, either personally or by any of his employees, may investigate the question of the liability of any property to any tax due prior to the passage of this act, and if said comptroller is satisfied that any taxes are due this state, he shall report such fact to the register of the prerogative court, or surrogate of the proper county, whereupon said register or surrogate shall cause said property to be taxed.

**Mortality Tables.**

14. In determining the value of a life estate, annuity, or estate for a term of years, the American Experience Table of Mortality, with interest at the rate of five per centum per annum, shall be used.

**Refund Erroneous Payments.**

15. When any amount of said tax shall have been paid erroneously to the state treasurer, it shall be lawful for the comptroller of the treasury, on satisfactory proof rendered to him of such erroneous payments, to draw his warrant on the state treasurer, in favor of the executor, administrator, person or persons who have paid any such tax in error, or who may be lawfully entitled to receive the same, for the amount of such tax so paid in error; *provided*, that all such applications for the repayment of such tax shall be made within two years from the date of such payment.

**Comptroller Notified by Register or Surrogate.**

16. The register of the prerogative court and every surrogate of any county in this state shall, within ten days after the probate of any will, either foreign or domestic, of the filing of a copy of any foreign will, or the taking out of letters of administration, notify, in writing, the comptroller of the treasury of this state of such probate or administration; and any surrogate or the register of the prerogative court, failing to notify said comptroller in writing of the probate of any will, or the filing of a copy of any foreign will, or the taking out of any letters of administration, shall be liable to a penalty of two hundred dollars, to be recovered in an action of debt in the name of the state of New Jersey.

**Comptroller Empowered to Examine Papers, Records, etc.**

17. The comptroller of the treasury of this state, either personally or by his assistant or other employe, is hereby empowered to examine any and all papers, documents and files which now are or hereafter may be filed or lodged with the register of the prerogative court, or with the surrogate of any county or with any other official of this state or of any municipality thereof, or with any person or corporation, for the purpose of ascertaining what, if any, property is, or shall be, liable to the payment of the tax provided for by this act. The sum of ten thousand dollars is hereby appropriated to the comptroller of the treasury of this state for the purpose of enabling said comptroller to carry out the provisions of this act.

**Appraisal. — Appeal.**

18. In order to fix the value of property of persons whose estates shall be liable to the payment of a tax under this act, whether the same be in the ownership of a resident or non-resident decedent, the comptroller of the treasury of this state on the application of any interested party, or upon his own motion, shall appoint some competent person as appraiser as often as and whenever occasion may require. Every such appraiser shall forthwith give notice, by mail, to such persons as the comptroller of the treasury of this state shall direct, of the time and place when and where he will appraise such property. He shall at such time and place appraise the same at its fair market value, and for that purpose the said appraiser is authorized to issue subpoenas and to compel the attendance of witnesses, and to take the evidence of such witnesses under oath concerning such property and the value thereof, and he shall make report thereof, and of such value, in writing to said comptroller of the treasury, together with such other facts in relation thereto as the said comptroller of the treasury may, by order, require, which report and other data required by said comptroller

shall be filed in the office of such comptroller, and from said report the said comptroller of the treasury shall forthwith assess and fix the cash value of such estate and levy the tax to which the same is liable, and shall immediately give notice thereof, by mail, to all parties known by said comptroller of the treasury to be interestd therein. Any person or corporation dissatisfied with said appraisalment or assessment may appeal therefrom to the ordinary of this state within sixty days after the making and filing of such assessment, on giving a bond, approved by the ordinary of this state, conditioned to pay said tax so as aforesaid levied by the said comptroller of the treasury, together with interests and costs, if the said tax be affirmed by the ordinary. Any person failing to attend before an appraiser after service of a subpoena, or refusing to give evidence concerning any estate, shall be liable to a penalty of two hundred dollars, to be recovered in an action of debt by the comptroller of the treasury.

[See notes to the Act of 1894, *ante*, p. 752.]

**Appraisers. — Misconduct. — Compensation.**

19. Any appraiser appointed pursuant to the provisions of this act who shall take any fee or reward, either directly or indirectly, from any executor or administrator, or any other person liable to pay any tax or any portion thereof, under the provisions of this act, shall be guilty of a misdemeanor, and, on conviction, shall be punished by a fine not exceeding one thousand dollars, or by imprisonment not exceeding one year, or both, at the discretion of the court, and, in addition thereto, the comptroller of the treasury of this state shall immediately dismiss such appraiser from his employment. The compensation of said appraisers shall be a sum not exceeding five dollars per day, to be fixed and determined upon by the said comptroller of the treasury, and to be paid out of the treasury of this state. Such appraisers shall also be reimbursed for all actual expenses incurred in the discharge of their duties.

**Jurisdiction.**

20. The ordinary of this state shall have jurisdiction to hear and determine all questions in relation to any tax levied under the provisions of this act.

**Citation.**

21. If it shall appear to the comptroller of the treasury of this state that any tax which has accrued under this act has not been paid according to law said comptroller shall report such fact, in writing, to the register of the prerogative court, and said register shall issue a citation citing the persons or corporations interested in the property liable to said tax to appear before the ordinary on a certain day, not more than three months from the date of such citation, and show cause why such tax should not be paid; the service of such citation and the subsequent proceedings had thereon shall conform to the practice prevailing in the prerogative court. Upon the making of any decree the register of the prerogative court shall, upon the request of the comptroller of the treasury of this state furnish one or more copies of said decree, and the same shall be docketed and filed by the clerk of the supreme court, or by the county clerk of any county in this state, upon the request of the comptroller of the treasury of this state, and the same shall have the same effect as a lien by judgment, and execution shall issue thereon according to the rules and practice appertaining to other judgments docketed and filed with said respective clerks.



**Attorney General to Prosecute Unpaid Taxes.**

22. Whenever the comptroller of the treasury of this state shall have reason to believe that any tax is due and unpaid under this act, after the neglect and refusal of the persons or corporations interested in the property and liable to said tax to pay the same, he shall notify the attorney general of this state, in writing, of such failure to pay such tax, and the said attorney general, when so notified, if he have probable cause to believe that a tax is due and unpaid, shall prosecute the proceeding before the ordinary of this state, as provided for in section twenty-one of this act, and the state treasurer shall, on the warrant of the comptroller, pay all the expenses of said proceeding.

**Records Kept by Comptroller.**

23. The comptroller of the treasury of this state shall keep a record in his department of all returns made by appraisers, the cash value of annuities, life estates and term of years, and the amount of all taxes assessed by him; in addition to the foregoing the said comptroller may enter in said books all other information and data which he may deem desirable or proper.

**Information as to Property Liable to Tax.**

24. Whenever a resident of this state has died, or shall hereafter die, testate or intestate, seized or possessed of any property liable to the payment of a tax under the provisions of this act, and no letters testamentary or of administration have or shall have been taken out on such estate within one year from the date of the death of such person, or whenever there is property, real or personal, within this state owned by a non-resident decedent which is liable to the payment of a tax under this act, and such non-resident decedent has been deceased for a period of three months without the tax due this state having been paid, it shall be lawful for the comptroller of the treasury of this state to enter into an agreement, in writing, with any person giving him information of the existence of property so liable to a tax, to pay to such person or persons out of any sum which may be collected from any such estate an amount not exceeding ten per centum thereof.

**Penalty for False Statements or Reports.**

25. Every executor, administrator, trustee, grantee, donee or vendee who wilfully and knowingly subscribes or makes any false statement of facts, or knowingly subscribes or exhibits any false paper or false report with intent to deceive any appraiser appointed pursuant to the provisions of this act, shall be guilty of a misdemeanor and punished accordingly.

**Definitions.**

26. The words "estate" and "property," wherever used in this act, except where the subject or context is repugnant to such construction shall be construed to mean the interest of the testator, intestate, grantor, bargainor or vendor passing or transferred to the individual or specific legatee, devisee, heir, next of kin, grantee, donee or vendee, not exempt under the provisions of this act, whether such property be situated within or without this state. The word "transfer," as used in this act, shall be taken to include the passing of property, or any

interest therein, in possession or enjoyment, present or future, by distribution by statute, descent, devise, bequest, grant, deed, bargain, sale or gift.

#### **Invalidity of Part not to Affect Other Sections.**

27. In case for any reason any section or any provision of this act shall be questioned in any court, and shall be held to be unconstitutional or invalid, the same shall not be held to affect any other section or provision of this act.

#### **Repealer. — Action heretofore not Impaired.**

28. All acts and parts of acts inconsistent with the provisions of this act are hereby repealed, but nothing in this repealer shall affect or impair the lien of any taxes heretofore assessed, or any tax due and payable, or any remedies for the collection of the same, or to surrender any remedies, powers, rights or privileges acquired by the state under any act heretofore passed, or to relieve any person or corporation from any penalty imposed by said acts.

Approved April 20, 1909.

[See notes to the Act of 1894, *ante*, p. 754.]

#### **Public Monuments or Memorials Exempted.**

N. J. St. 1910, c. 28. Approved March 17, 1910.

A FURTHER SUPPLEMENT TO AN ACT entitled "An Act to tax the transfer of property of resident and non-resident decedents by devise, bequest, descent, distribution by statute, gift, deed, grant, bargain and sale in certain cases," approved May fifteenth, one thousand eight hundred and ninety-four.

1. All property passing to any executor, trustee or public corporation for, or to be expended in, the erection of a public monument or public memorial in this state, shall be exempt from the payment of taxes under the act to which this is a supplement.

2. The exemption from the payment of such taxes, hereby provided for, shall extend to all property that may have heretofore passed for such purpose as well as to all property that may hereafter pass for such purpose.

3. This act shall take effect immediately.

[As to exemptions see *ante*, p. 759.]

## NEW YORK.

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### **In General.**

New York has had a collateral inheritance tax since 1885, a direct inheritance tax on personal property since 1891, and on real estate since 1903. Until 1910 the rate was 1 per cent on direct inheritances, and 5 per cent on collateral inheritances. The much-criticised law of 1910 took effect July 11, 1910, and introduced graduated rates running up to 25 per cent.

It would be hard to find an important law of any sort which so quickly defeated its own purpose as this law. Its exorbitant rates, its inequalities and the intolerable burdens that it placed upon the property of non-residents quickly aroused most emphatic protests from all classes in the community, and resulted in the repeal of all its more offensive features at the next legislature.

The act of 1911 substantially reduces the rates of tax although leaving them higher than they were before 1910 and retaining the progressive feature. Perhaps its most commendable feature is that it does away with the double taxation of property of non-residents by providing that the inheritance tax in the case of non-residents shall be collected only on their tangible property within the state. Tangible property is so defined that it does not include money, bank deposits, shares of stock or bonds.

In one respect non-residents gain more than residents of New York who must pay an inheritance tax on tangible property within the state and their intangible property wherever situated. If some other state taxes shares in a local corporation owned by a resident of New York, it does not relieve the estate from paying a tax to New York as well.

As has been seen, in some states credit is allowed for taxes so paid to another state, and other states have a reciprocal or retaliative provision designed to prevent other states from taxing intangible property of non-residents. But neither of these features is found in the New York act.

The law of 1911 is more liberal as to bequests to charitable institutions in making such bequests exempt from inheritance tax wherever the institution is located. Formerly such bequests were taxable unless the charitable institution was located in the state of New York.

The exemptions apply to each inheritance rather than to the estate as a whole. In the case of a non-resident, apparently, if the New York portion of the inheritance is less than the exempted amount, the inheritance is not taxable.

It is the usual practice to require an inventory of the entire property of a non-resident. The comptroller's office states that this is "only for the purpose of seeing that the stocks of New York corporations are fully set forth, and for the purpose of prorating the property in this state in the payment of legacies under the decedent's will or the interstate law of decedent's domicile." That is to say, for the purpose of preventing non-resident executors from satisfying only tax-exempt inheritances out of the New York portion of the property. This purpose becomes less important under the act of 1911.

#### List of Statutes.

1885.	Statutes of New York,	c. 483.
1887.	" "	c. 713.
1889.	" "	c. 307.
1889.	" "	c. 479.
1890.	" "	c. 553.
1891.	" "	c. 34.
1891.	" "	c. 215.
1892.	" "	c. 167.
1892.	" "	c. 168.
1892.	" "	c. 169.
1892.	" "	c. 399.
1892.	" "	c. 443.
1893.	" "	c. 199.
1893.	" "	c. 704.
1894.	" "	c. 767.
1895.	" "	c. 191.
1895.	" "	c. 378.
1895.	" "	c. 515.
1895.	" "	c. 556.
1895.	" "	c. 861.
1896.	" "	c. 160.
1896.	" "	c. 908.
1896.	" "	c. 952.
1896.	" "	c. 953.
1897.	" "	c. 284.

1897. Statutes of New York, c. 375.  
 1898. " " " c. 88.  
 1898. " " " c. 289.  
 1899. " " " c. 76.  
 1899. " " " c. 269.  
 1899. " " " c. 270.  
 1899. " " " c. 389.  
 1899. " " " c. 406.  
 1899. " " " c. 672.  
 1899. " " " c. 737.  
 1900. " " " c. 379.  
 1900. " " " c. 382.  
 1900. " " " c. 658.  
 1900. " " " c. 723.  
 1901. " " " c. 173.  
 1901. " " " c. 288.  
 1901. " " " c. 458.  
 1901. " " " c. 493.  
 1901. " " " c. 609.  
 1901. Revised Statutes and Gen. Laws (Birdseye), pp. 3591-3604.  
 1902. Statutes of New York, c. 101.  
 1902. " " " c. 283.  
 1902. " " " c. 496.  
 1903. " " " c. 41.  
 1904. " " " c. 758.  
 1904. Consolidated Laws, vol. 5, c. 62, ss. 220-245.  
 1905. Statutes of New York, c. 368.  
 1905. Revised Stats., Codes and Gen. Laws (Birdseye), v. 3 a. 10, ss. 220-243.  
 1905. Gilbert's Annotated Code, s. 447.  
 1905. Code of Procedure, s. 118.  
 1906. Statutes of New York, c. 111.  
 1906. " " " c. 567.  
 1906. " " " c. 699.  
 1907. " " " c. 204.  
 1907. " " " c. 323.  
 1907. " " " c. 709.  
 1908. " " " c. 310.  
 1908. " " " c. 312.  
 1908. " " " c. 321.  
 1909. " " " c. 62.  
 1909. " " " c. 596.  
 1909. Birdseye, Cummings & Gilbert, Consolidated Laws, vol. 5, p. 5977.  
 ss. 220-245.  
 1910. Statutes of New York, c. 70.  
 1910. " " " c. 600.  
 1910. " " " c. 706.  
 1911. " " " c. 732.  
 1910. Annotated Consolidated Laws (Birdseye, Cummings & Gilbert), Supplement, ss. 220-302, pp. 1171-1189.  
 Penal Code, s. 48c added L. 1903, c. 692.

### Constitutional Limitations.

**New York Constitution, 1894, a. 3, s. 20.**

Every law which imposes, continues or revises a tax shall distinctly state the tax and the object to which it is to be applied, and it shall not be sufficient to refer to any other law to fix such tax or object.

[New York Constitution, 1894, seems to contain no provision requiring uniformity in taxation. See Thorpe, vol. 5, p. 2694, *et seq.*]

### THE ACT OF 1885.

[N. Y. St. 1885, c. 483. Approved June 10, 1885; in effect June 30, 1885.]

AN ACT TO TAX GIFTS, LEGACIES AND COLLATERAL INHERITANCES IN CERTAIN CASES.

[Title amended by St. 1891, c. 215. See *Matter of Howe*, 112 N. Y. 100.]

**S. 1. Transfers Taxable. — Rate. — Exemptions.** After the passage of this act, all property which shall pass by will or by the intestate laws of this state from any person who may die seized or possessed of the same while being a resident of the state, or which property shall be within this state, or any part of such property, or any interest therein, or income therefrom, transferred by deed, grant, sale or gift made or intended to take effect in possession or enjoyment after the death of the grantor or bargainor, to any person or persons, or to a body politic or corporate, in trust or otherwise, or by reason whereof any person, or body politic or corporate shall become beneficially entitled, in possession or expectancy, to any property, or to the income thereof, other than to or for the use of father, mother, husband, wife, children, brother and sister and lineal descendants born in lawful wedlock, and the wife or widow of a son and the husband of a daughter, and the societies, corporations and institutions now exempted by law from taxation, shall be and is subject to a tax of five dollars on every hundred dollars of the clear market value of such property, and at and after the same rate for any less amount, to be paid to the treasurer of the proper county, and in the city and county of New York to the comptroller thereof, for the use of the state, and all administrators, executors and trustees shall be liable for any and all such taxes until the same shall have been paid, as hereinafter directed; provided that an estate which may be valued at a less sum than five hundred dollars shall not be subject to said duty or tax.

[Amended by St. 1887, c. 713, 1891, c. 215, and 1892, c. 169.]

### Nature. — A Tax on Successions.

This act imposes a tax on the right of succession and not on property. *In re Swift*, 137 N. Y. 77, 88, 32 N. E. 1096, 18 L. R. A. 709, 64 Hun 639; 16 N. Y. Suppl. 193; 19 N. Y. Suppl. 292. In *Matter of McPherson*, 104 N. Y. 306, 10 N. E. 685, 58 Am. Rep. 502, this question was not determined. The court remarks that in either case it is a special tax. In the one case it is a tax upon the particular class of property, and in the other case a tax upon

succession or devolution of property, or the right to receive property. In either case it is free from constitutional objection.

### **Constitutionality.**

The court entertains no doubt that the act is constitutional, that the power of the state extends to an inheritance tax. *In re McPherson*, 104 N. Y. 306, 316, 10 N. E. 685, 58 Am. Rep. 502. This act does not conflict with the fourteenth amendment to the federal constitution. *Wallace v. Myers*, 38 Fed. 184, 4 L. R. A. 171.

### **Imperfections. — Contingent Estates.**

It was pointed out that the statute contains many imperfections and that there would be great embarrassment and difficulty in executing the act in the cases of contingent remainders and expectant estates. But the court holds that this is no reason for condemning the entire act. *In re McPherson*, 104 N. Y. 306, 324, 10 N. E. 685, 58 Am. Rep. 502.

### **Not Retroactive on Contingent Interests.**

Where the testator died in 1881 and left a legacy to his nephew to be paid when he should reach twenty-one, which occurred in October, 1885, this legacy is not subject to the inheritance tax of 1885, as the interest passed from the testator before the taking effect of the statute. *In re Cogswell*, 4 Dem. Surr. (N. Y.) 248.

### **Law of Date of Original Will Governs Power of Appointment.**

One who takes on the execution of a power of appointment contained in a will takes under the will and is subject to taxation unless excepted by the act of 1885. Where the testator died in 1886 the power was exercised in 1890. *In re Stewart*, 131 N. Y. 274, 30 N. E. 184, 14 L. R. A. 836, affirming

### **On Property of a Non-resident.**

This act imposed a tax upon two classes of property: (1) upon all property which shall pass from any person who may die seized or possessed of the same while being a resident of the state; (2) upon property that shall be within this state transferred *inter vivos* to take effect at the death of the grantor. And the court finds that there was no intention by this section to impose a succession tax upon property passing by will or intestacy from a non-resident of the state to his collateral relatives.

The fact that the New York statute of 1887, c. 713, amended the statute of 1885, s. 1, so as to subject to its operation the property within the state of a non-resident decedent, furnishes some evidence that prior thereto the proper construction of the section did not include such property within its operation.

"The corporate stocks of the decedent were not, under the general laws of this state, taxable here, although the share certificates may have been held here by her agents. The certificates are in no general sense property. They simply represent interests in the corporations, and the situs of the property owned by a shareholder in a corporation is either where the corporation exists or at the domicile of the shareholder; it can in no proper sense be said to be where the certificates happen to be in the hands of an agent in a state where the corporation has no existence and the owner no domicile. So, too, the bonds of foreign corporations in the hands of the agents of the decedent here were not, in a legal sense, property within this state, and they were not, under the general laws or the policy of the state, taxable here. On the contrary, they were, by the general policy of the state, exempted from taxation here. There is nothing in the act of 1885 from which it can be inferred that the legislature meant so far to depart from its general system and policy of taxation as to impose here a succession tax property thus situated. It was dealing with taxation upon the property of persons domiciled here, and used language sufficient to impose taxation upon such property, but not upon property of non-residents which had no situs in this state. It cannot be presumed that it was the intention of the legislature to impose taxation upon all the property of any decedent found within this state. Suppose a foreigner should come here with negotiable securities in his possession for the purpose of buying property here, and soon after should die here. Or suppose a merchant should come here from some other state with negotiable drafts or securities in his possession and should die here shortly after reaching this state; can it be supposed in either of such cases that it was the legislative intent that before the property of the decedent could be taken out of this state to the jurisdiction of his domicile it should be subjected to a tax to enhance the revenues of the state? Then, again, if this act is to be so construed as to reach personal estate of non-resident decedents, how is it to be administered? There are no means of ascertaining here how much of the estate will pass to collateral relatives under a will or by intestacy. That can only



be known after the entire expenses of administration and the debts and liabilities of the deceased have been ascertained and deducted at the place of his domicile. Suppose a non-resident dies, leaving \$1,000,000 in this state, and is largely indebted at the place of his domicile, what his net estate will be after deducting debts and expenses of administration can only be ascertained at his domicile, where his estate must be finally administered and adjusted, and there can be no way of adjusting the estate here, as there is no machinery in the law here appropriate to such a purpose; and thus it would be impractical to administer this statute.

"Still further, if a succession tax is demanded and paid here upon the property of a non-resident decedent, that does not answer a claim for a further tax at the place of the decedent's domicile; and thus his estate might, and many times would be, subjected to a double succession tax. There is in the state of Pennsylvania a law for the taxation of collateral inheritances like that which exists here, and if this estate be subjected to this tax in this state, it may again be subjected to a like tax in that state. All these considerations should lead us to hesitate to put upon section 1 such a construction as would bring within its purview the property of a non-resident decedent left in this state at his death." *Per* Andrews, J., in *In re Enston*, 113 N. Y. 174, 181, 21 N. E. 87, 3 L. R. A. 464; 22 N. Y. St. 569, reversing 46 Hun 506, 19 Abb. N. Cas. 227; 10 N. Y. St. 380, 5 Dem. Surr. 93; 8 N. Y. St. 781, overruling *In re Leavitt*, 4 N. Y. Suppl. 179.

*In re Enston* was followed in *In re Hall*, 55 Hun 608, 8 N. Y. Suppl. 556.

### **United States Bonds.**

A bequest of United States government bonds is subject to the inheritance tax. *In re Carver*, 4 Misc. Rep. 592, 25 N. Y. Suppl. 991. *Wallace v. Myers*, 38 Fed. Rep. 184.

### **Property Exempt under General Law.**

Life insurance policies and other property not taxable under general law can still be included for taxation under the inheritance tax law. *In re Knoedler*, 140 N. Y. 377, 380, 35 N. E. 601, affirming 68 Hun 150.

### **Real Estate out of the State.**

A tax on real estate situated out of the state though owned by a resident of New York was not imposed by this act. *In re Swift*,

137 N. Y. 77, 88, 32 N. E. 1096, 18 L. R. A. 709; 64 Hun 639, 16 N. Y. Suppl. 193, 19 N. Y. Suppl. 292.

### **In Foreign Corporations.**

Certificates of stock belonging to a testator in New York of corporations created under the laws of other states are not subject to the New York inheritance tax of 1885, where the testatrix died February 18, 1887. *In re Thomas*, 3 Misc. Rep. 388, 24 N. Y. Suppl. 713.

### **Adopted Children.**

The words "lineal descendants born in lawful wedlock" might under some circumstances be given wide meaning so as to bring in natural or illegitimate children, but can be carried no farther. The word "children" is not broad enough on its face to cover the case of an adopted child. *In re Miller*, 110 N. Y. 216, 222, 18 N. E. 139, affirming 47 Hun 394. [Adopted children were exempted by the act of 1887, c. 713.]

### **Descendants of Brothers and Sisters.**

Under the statute of 1885 descendants of brothers and sisters are not intended to be exempt from the tax. *In re Miller*, 5 Dem. Surr. (N. Y.) 132, 45 Hun 244.

### **The Husband of a Daughter.**

The New York statute of 1885 exempts from taxation the husband of a daughter, and the court holds that the daughter's death before the testator does not subject the legacy to the husband to the inheritance tax. *In re McGarvey*, 6 Dem. Surr. 145, 20 St. Rep. 135.

### **Bequest to the United States.**

A state inheritance tax levied upon a bequest to the United States is not void as an attempt to tax the property of the United States, since the tax is imposed upon the legacy before it reaches the hands of the government. The legacy becomes the property of the United States only after it has suffered a diminution to the amount of the tax, and it is only upon this condition that the legislature assents to a bequest of it. *United States v. Perkins*, 163 U. S. 625, 630, affirming *In re Merriam*, 141 N. Y. 479, 36 N. E. 505.

**"Societies, Corporations and Institutions now Exempted by Law."**

*What is a General Exemption from Taxation?*

Exemption of any building used by a church for public worship did not constitute a general exemption of the church from taxation within the meaning of the collateral inheritance act, and therefore the church is not exempt from taxation upon a legacy of "ten thousand dollars towards the building of a new church." *Sherrill v. Christ Church*, 121 N. Y. 701, 702, 25 N. E. 50, reversing *In re Van Kleeck*, 55 Hun 472.

It is enough to exempt societies that they are included in the list of societies exempted from tax by a general law, and the exemption need not arise from a special provision of a statute. *In re Miller*, 5 Dem. Surr. (N. Y.) 132, 45 Hun 244.

The exemption under the New York statute of 1885 of charitable corporations which are exempt by law is not confined to corporations the property of which is completely exempt, but may apply to a corporation which is exempt from taxation up to a certain valuation in its property, as it is assumed that the corporation will not exceed its corporate powers and take more property than is authorized. *In re Vassar*, 127 N. Y. 1, 12, 27 N. E. 394, reversing 58 Hun 378, 12 N. Y. Suppl. 203.

*Particular Societies.*

The following societies have been held subject to tax under this act: American Museum of Natural History. [*In re Vanderbilt*, 10 N. Y. Suppl. 239, 2 Con. Surr. 319.] The Board of Home Missions of the Presbyterian Church. [*In re Board of Home Missions*, 11 N. Y. Suppl. 311.] The Metropolitan Museum of Art. [*In re Vanderbilt*, 10 N. Y. Suppl. 239, 2 Con. Surr. 319.] The Young Men's Christian Association. [*In re Vanderbilt*, 10 N. Y. Suppl. 239, 2 Con. Surr. 319.]

The Metropolitan Museum of Art is not exempt from taxation as a free public charity, as it derives its income from membership and sales of books. Its privileges and advantages are not free to the general public. *In re Wolfe*, 15 N. Y. Suppl. 539, 2 Con. Surr. 600.

The Church Foundation is exempt from the statute of 1885, as it is based on personal property which is specifically exempted by law from taxation. *Church Charity Foundation v. People*, 6 Dem. Surr. (N. Y.) 154.

*Where only the Real Estate of a Corporation is Exempt.*

Where a statute giving a corporation additional privileges expressly provides that its real estate shall be exempt from taxation, this shows by inference that its personal property was not exempt, and therefore it is subject to the inheritance tax, although it would not have been exempt as an almshouse under general law if there had been no special provision in its special statute conferring upon it additional privileges. *In re Forrester*, 58 Hun 611, 12 N. Y. Suppl. 774.

**"For the Use of the State."**

It was objected that the requirement that the inheritance tax should be paid for the use of the state did not comply with the New York constitution, article 3, section 20, which provides that all tax laws "shall distinctly state the tax and the object to which it is to be applied." But the court holds that this provision of the constitution did not apply to the inheritance tax, as it has no reference to special taxes which may be collected in a variety of ways under general laws. *In re McPherson*, 104 N. Y. 306, 319, 10 N. E. 685, 58 Am. Rep. 502.

**"Provided that an Estate . . . less . . . than Five Hundred Dollars shall not be Subject to . . . Tax."**

The statute imposes the tax upon the individual and it can be imposed only when the particular interest devised exceeds in value the amount of limitation provided by the statute. *In re Cager*, 111 N. Y. 343, 347, 19 N. Y. St. 497, 18 N. E. 866, affirming 46 Hun 657; *In re Hopkins*, 6 Dem. Surr. 1; *In re McCready*, 6. Dem. Surr. 292; *In re Smith*, 5 Dem. Surr. (N. Y.) 90. *Contra*, *In re Miller*, 5 Dem. Surr. (N. Y.) 132, 45 Hun 244.

A life estate of a value of less than five hundred dollars is not subject to taxation. *In re Cager*, 111 N. Y. 343, 347, 19 N. Y. St. 497, 18 N. E. 866, affirming 46 Hun 657.

S. 2. When any person shall bequeath or devise any property, or interest therein, or income therefrom, to a father, mother, husband, wife, children, brother and sister, the widow of a son, or a lineal descendant, during life or for a term of years, and the remainder to a collateral heir of the decedent, or to a stranger in blood, or to a body politic or corporate at their decease, or on the expiration of such term, the property so passing shall be appraised immediately after the death of the decedent, at what was the fair market value thereof, at the time of the death of the decedent, in the manner hereinafter provided, and after deducting therefrom the value of said life estate, or term of years, the tax prescribed by this

act on the remainder shall be immediately due and payable to the treasurer of the proper county, and in the city and county of New York to the comptroller thereof, and together with the interest thereon, shall be and remain a lien on said property until the same is paid; provided that the person or persons, or body politic or corporate beneficially interested in the property chargeable with said tax may elect not to pay the same until they shall come into the actual possession or enjoyment of such property, or, and in that case, such person or persons, or body politic or corporate, shall give a bond to the people of the state of New York in a penalty three times the amount of the tax arising upon personal estate, with such sureties as the said surrogate may approve, conditioned for the payment of said tax and interest thereon, at such time or period as they or their representatives may come into the actual possession or enjoyment of such property, which bond shall be filed in the office of the surrogate of the proper county; provided, further, that such person shall make a full verified return of such property to said surrogate, and file the same in his office within one year from the death of the decedent and within that period enter into such security and renew the same every five years.

### **“Remainder.”**

A “remainder” under section 2 of this statute must apply only to vested remainders, and a contingent remainder cannot be included; when the property bequeathed or devised actually vests, and it passes to the collateral heir, then the tax becomes due and payable. In the case of a vested remainder the vesting takes place at the death of the decedent; in the case of a contingent remainder the vesting takes place when the defeating contingency has been rendered impossible. *In re Lefever*, 5 Dem. Surr. (N. Y.) 184.

### **Contingent Interests.**

Contingent future interests in an annuity cannot be taxed, but they should be reserved for future action until the contingency has been determined. *In re Clark*, 1 Con. Surr. 431, 22 N. Y. St. 354, 5 N. Y. Suppl. 199. To the same effect see *In re Wallace*, 4 N. Y. Suppl. 465.

Where a remainder in a trust estate was given to such persons named as might be living at the successive termination of each trust these remainders are not liable to taxation until the termination of each trust, as it cannot until then be determined whether the trust fund would pass to persons exempt from taxation or to persons taxable.

The court distinguishes the *Matter of Stewart*, 131 N. Y. 277, as that case does decide that contingent interests, although vesting in possession at a future day, may be at once valued and assessed. And the court says that it may possibly be that where the only

contingency of the future is upon which of the several named persons or classes of persons, all of whom are liable to taxation, the beneficial interest will ultimately devolve, the appraisal and assessment need not be postponed. Yet where the contingency touches the taxable character of the succession, where it is only in the chance of uncertain events that the beneficial interests will finally alight where they will be taxable at all, a delay until the contingency is solved is both just and necessary. *In re Curtis*, 142 N. Y. 219, 223, 36 N. E. 887, affirming 73 Hun 185; 56 N. Y. St. 113, 25 N. Y. Suppl. 909.

When the estate transferred has a fixed or ascertainable value at the time of the death of the testator, the value at that time must be the basis of the appraisal whenever made. But if the person to whom the property passed cannot be known till the death of the life tenant, the tax cannot be imposed until after that event. So interest in a vested remainder taking effect after the death of the life tenant must be appraised as of the death of the testator and not as of the death of the life tenant. *In re Davis*, 149 N. Y. 539, 547, 44 N. E. 185, affirming 91 Hun 53.

### **Valuation of Life Estate.**

Valuation of a life estate under the New York statute of 1885 should be made according to the rules of the supreme court where no tables are specified in the statute. *In re Robertson*, 5 Dem. Surr. (N. Y.) 92.

### **Life Estate Determinable in Marriage.**

Where the widow is given the use of the whole of an estate for life, but in case of her remarriage then the use of one-half only, the value of her estate or of the remainder cannot now be ascertained for the purpose of the assessment of the tax. That cannot be done until her death or remarriage. *In re Millward*, 6 Misc. Rep. 425, 27 N. Y. Suppl. 286.

### **Value at Date of Change of Title.**

As the inheritance tax is a tax upon succession and not upon property, the true test of value is the value of the estate at the time of the transfer of title, and not its value at the time of the transfer of possession. *In re Davis*, 149 N. Y. 539, 547, 44 N. E. 185, affirming 91 Hun 53.

**From Principal or Income.**

The tax on the life estate ought to be taken out of the income and the tax on the remainder out of the capital. *In re Johnson*, 6 Dem. Surr. 146.

**Direction in Will.**

The fact that a will directs that the amount of the tax upon legacies and devises should be paid as an expense of administration does not affect the imposition of the tax. The amount of the tax to be assessed on prior legacies should not be deducted from the residuary estate in ascertaining its value for the purpose of taxation. That which is to be reported by the appraiser for the purpose of the tax is the value of the interest passing to the legatee under the will without any deduction for any purpose, nor under any testamentary direction. *In re Swift*, 137 N. Y. 77, 87, 32 N. E. 1096, 18 L. R. A. 709, 64 Hun 639, 16 N. Y. Suppl. 193, 19 N. Y. Suppl. 292.

S. 3 provides a tax on the excess over commissions or reasonable compensation.

A bequest in addition to commissions to an executor is not within the intention of this section, which provides for a case where a bequest is made in lieu of commissions. *In re Underhill*, 20 N. Y. Suppl. 134, 2 Con. Surr. 262.

S. 4 provides that all taxes are due at the death of the decedent with interest at six per cent from that time if paid within one year, and if not so paid with interest at ten per cent, provided that if the tax is paid within six months no interest shall be charged and a discount of five per cent shall be allowed.

**Interest. — Penalty.**

S. 5. The penalty of ten per cent per annum, imposed by section four hereof for the non-payment of said tax, shall not be charged where in cases by reason of claims made upon the estate, necessary litigation or other unavoidable cause of delay, the estate of any decedent, or a part thereof, cannot be settled at the end of a year from the death of the decedent, and in such cases only six per cent per annum shall be charged upon the said tax from the expiration of such year until the cause of such delay is removed.

**Penalty.**

Where the estate cannot be settled at the end of a year from death, the intention is merely to relieve the estate from the penalty and not from the interest. *In re Prout*, 22 N. Y. St. Rep. 334, 3 N. Y. Suppl. 834.

**Interest. — To what Estates Applicable.**

These provisions apply to the will of one who died in 1890 although proceedings for collection were pending after the passage of the act of 1892. *In re Fayerweather*, 143 N. Y. 114, 38 N. E. 278.

**Interest. — Unavoidable Cause of Delay.**

Section 4 intends to provide that the interest at ten per cent shall be remitted and no interest whatever charged during the first year, provided that a cause for remitting the interest on account of an unavoidable cause of delay under section 5 exists. The burden of showing that such unavoidable cause of delay in settling any estate exists is on the estate. *People v. Prout*, 53 Hun 541, 6 N. Y. Suppl. 457.

The legatee should be relieved from the payment of interest at ten per cent for the period covered by the contest of the wills of two heirs at law of the decedent, pending which contest the estates of these heirs had no legal representative. *In re Prout*, 3 N. Y. Suppl. 831. The lower rate of interest should be charged under this section where litigation prevented the executors from taking any action. *In re Stewart*, 131 N. Y. 274, 285, 30 N. E. 184, 14 L. R. A. 836.

S. 6. The administrator or executor is to deduct the tax.

S. 7. The executor, administrator or trustee shall have power to sell the property to enable him to pay the tax.

S. 8. Payment of the tax is to be made to the county treasurer of the "proper county."

**"Proper County."**

This section provides that every tax shall be paid to the treasurer of the proper county, and it was contended that this means the county where the property liable to tax is situated. The court finds that the words "proper county" evidently refer to the county of the surrogate first properly acquiring jurisdiction, and the surrogate of a county retains such jurisdiction throughout all proceedings even should there be real estate in every county in the state. *In re Keenan*, 5 N. Y. Suppl. 200, 1 Con. Surr. 226.

S. 9. Executors are to give notice to the treasurer or comptroller of the county.

S. 10 provides for a refund of the tax where the legatee is forced to refund to pay debts.



S. 11 provides that the tax is to be paid on the transfer of stocks by a foreign executor or administrator.

S. 12. A tax paid erroneously is to be refunded.

**S. 13. Appraisal.** In order to fix the value of property of persons whose estates shall be subject to the payment of said tax, the surrogate, on the application of any interested party, or upon his own motion shall appoint some competent person as appraiser as often as, and whenever occasion may require, whose duty it shall be forthwith to give such notice by mail, and to such persons as the surrogate may by order direct, of the time and place he will appraise such property; and at such time and place to appraise the same at its fair market value, and make a report thereof in writing to said surrogate, together with such other facts in relation thereto as said surrogate may by order require, to be filed in the office of such surrogate; and from this report the said surrogate shall forthwith assess and fix the then cash value of all estates, annuities and life estates, or term of years growing out of said estate, and the tax to which the same is liable, and shall immediately give notice thereof by mail to all parties known to be interested therein. Any person or persons dissatisfied with said appraisalment or assessment may appeal therefrom to the surrogate of the proper county within sixty days after the making and filing of such assessment, on paying, or giving security approved by the surrogate to pay all costs, together with whatever tax shall be fixed by said court. The said appraiser shall be paid by the county treasurer or comptroller out of any funds he may have in his hands on account of said tax, on the certificate of the surrogate, at the rate of three dollars per day for every day actually and necessarily employed in said appraisalment, together with his actual and necessary traveling expenses.

#### **Duties to Surrogate. — Notice to Comptroller.**

As the surrogate is invested with the duty and authority to assess and fix the tax to which the property is liable under this section, which carries the power to determine the question of liability, a prior determination of that question is conclusive upon the comptroller and district attorney, and leaves no scope for the operation of sections 16 and 17, except in the case of a refusal or a neglect to pay the tax which is due. Therefore the tax was legally assessed, although neither the treasurer nor the comptroller was given any notice of the proceedings.

"When we read all of the provisions of this act, it is perfectly apparent that a special system of taxation was created for the benefit of the state, with all the necessary machinery for its working; the control with respect to which was vested in the surrogate's court, with a jurisdiction exclusive in its nature. In the assessment of a tax upon property passing by will, or by the intestate law, the responsibility is imposed by the law upon the surrogate. He acts for the state and he is commanded to assess and fix the tax to which the property is liable. To comply with the command in section 13 of the act, in that respect, he must,

necessarily, determine the question of liability to taxation, inasmuch as if no such liability exists he is without jurisdiction in the matter. When the machinery of this system of taxation is set in motion, under section 13 of the act, whether upon the application of interested parties, or upon his own motion, the surrogate, by force of its provisions, is at once invested with the office and the functions of an assessor for the state, whose duty it is to assess for its use a tax, and in whom, not only by virtue of the office, but by the further provisions of section 15, inheres the authority, and upon whom rests the obligation, to determine the question of whether the property of the decedent, which passes to others, is subject or liable to taxation by the state. He must decide whether the property is taxable, for that fact lies at the foundation of his jurisdiction and is of the essence of his right to proceed with the assessment. Not all the property of decedents may be subject to the tax imposed by the first section, and what property shall be assessed for taxation is left, by the thirteenth section, for the surrogate to determine. To quote again the language, he 'shall assess and fix the cash values of all the estates, etc., and the tax to which the same is liable,' and this direction to assess involves the necessity, as well as the power, to determine the question of liability; as much as it does in the case of assessors of taxes in the general scheme of taxation."

"I can see no difference between the principle upon which the surrogate acts, in proceeding to assess property for taxation under the act, and that upon which, in the general system of taxation in the state, tax assessors act in the assessment of persons or property for purposes of taxation. It is well settled, as to them, that in their proceedings they must determine the question of liability to taxation as a fact, which 'gives them jurisdiction to assess. It is not only an important, but it is a conditional step in the proceeding for the assessment. That the doctrine of notice has any application in such proceedings to the case of the comptroller, is a proposition which has neither support in some requirement of the act, nor is justified by his relation to the subject-matter. He is not a person who has any interest in the property. He is an utter stranger to it. Contingently upon the refusal or neglect to pay a tax due under the act, it may become his duty to notify the district attorney to proceed to enforce collection. The performance of that duty, however, involves the idea of a failure of the surrogate to act at all, or of a neglect or refusal to

obey the decree of the Surrogate's Court. It, doubtless, is very proper that the surrogate should cause the comptroller to be notified of the proceedings for appraisement and assessment, in order that a question which concerns the interests of the state may be tried out in the fullest possible manner; but nothing in the law, or in the relations of the comptroller, makes notice to him a prerequisite to a complete determination by the surrogate of the questions presented in the proceedings. The doctrine of notice is one which finds application when it is sought to tax the property of the citizen. When he is to be assessed it is essential that he shall be given an opportunity to be heard, to establish a demand against him. As matter of fact, in this proceeding, it appears that the comptroller was caused to be notified by the surrogate before he passed upon the question of the liability of these legacies to taxation; so that he had his opportunity to appear and be heard, if he had chosen to avail himself of it. I can see no more force in the argument as to an implied requirement of notice to him, than if the argument was made, in the case of the assessment and taxation of property under the general system of taxation in the state, that some state official should have notice and the opportunity to be heard." *Per* Gray, J., in *In re Wolfe*, 137 N. Y. 205, 211, 33 N. E. 156, affirming 66 Hun 389, 29 Abb. N. Cas. 340, 21 N. Y. Suppl. 515; reversing 2 Connolly 600, 15 N. Y. Suppl. 539.

### **Contingent Interests.**

The court holds that contingent interests are subject to the power given under the provisions of section 13, and that the contingent interests given by a will which after the death of a testator are converted by the happening of the event upon which they are limited into actual vested estates may then be appraised and taxed under the provisions of section 13. The intention of the legislature under this act was to impose a tax on every interest immediate or future, derived under a testator or intestate not embraced in the exception. No collateral inheritance was excepted in terms. *In re Stewart*, 131 N. Y. 274, 281, 30 N. E. 184, 14 L. R. A. 836.

### **Notice to Parties.**

The act was attacked on the ground that no proper notice was given to the taxpayer. The court construes section 13 of the act liberally as requiring the surrogate to give notice to all persons

interested, and it is further provided that immediately after he has assessed a tax the surrogate shall "give notice by mail to all parties."

The section further provides a right of appeal and upon such appeal there is another opportunity to be heard. There is still further opportunity to be heard under section 16 of the act, which provides for the service of a citation on an order to show cause why the tax should not be paid.

It is clear that the person thus cited may allege any reason whatever which shows that he ought not to pay it. He may answer that he has not had an opportunity to be heard at the appraisal, and that therefore the tax as to him is void. He may show any error affecting the validity of the tax, or that he has never received and never will receive the inheritance or legacy, and it would undoubtedly be a justification for refusing to pay that he absolutely renounced and refused to accept or receive the inheritance or legacy. If the surrogate should err in his decision there would be the right of appeal to the supreme court.

The court concludes that in all these ways there is sufficient provision for notice and hearing for all parties interested. *In re McPherson*, 104 N. Y. 306, 323, 10 N. E. 685, 58 Am. Rep. 502.

S. 14 makes it a misdemeanor for the appraiser to take any reward from the person liable to pay the tax.

**S. 15. Jurisdiction.** The surrogate's court in the county in which the real property is situate of a decedent who was not a resident of the state, or in the county of which the decedent was a resident at the time of his death, shall have jurisdiction to hear and determine all questions in relation to the tax arising under the provisions of this act, and the surrogate first acquiring jurisdiction hereunder shall retain the same to the exclusion of every other.

### **Jurisdiction of Surrogate's Courts.**

The imposition and collection of this tax are simply incidents in the final settlement and adjustment of estates, and therefore properly within the jurisdiction of surrogate's courts. *In re McPherson*, 104 N. Y. 306, 324, 10 N. E. 685, 58 Am. Rep. 502.

### **Power to Declare Will Void.**

This section creates a special grant of power aside from the ordinary jurisdiction of the surrogate. This includes the power to hold void any provision in the will and thus to decide that nothing passed under it to the beneficiary named. *In re Ullman*, 137 N. Y. 403, 33 N. E. 480.

S. 16 provides for citation to issue on proceedings to enforce payment of the tax.

The surrogate has no authority to decide the liability of the executor for the inheritance tax upon motion by the executor. The only way to obtain a decision in this question is by proceedings instituted by the district attorney under section 16. *In re Farley*, 15 N. Y. St. Rep. 727.

### **Omitted Property.**

Under this statute the state has a right after an appraisal has been had and property has been withheld from the notice of the appraiser, to proceed under sections 16 and 17 of the statute to levy the tax on the omitted property. *In re Smith*, 23 N. Y. Suppl. 762.

S. 17 provides for referring cases of refusal to pay to the district attorney.

Under this section the comptroller is required whenever he has reason to believe a tax is due and unpaid to notify the district attorney. *In re Vanderbilt*, 10 N. Y. Suppl. 239, 2 Con. Surr. 319.

S. 18 requires the surrogate and county clerk to make a statement of parties liable to the tax to the county treasurer or comptroller.

S. 19 provides for the payment of expenses.

S. 20 designates the book to be furnished to the surrogate.

S. 21 provides for the payment and collection of taxes.

S. 22 allows the county officers to retain five per cent as compensation for collection.

S. 23 covers the receipt for and recording of the payment. [This section was amended by St. 1891, c. 215.]

## **THE ACT OF 1887.**

N. Y. St. 1887, c. 713. Approved June 25, 1887.

Chapter four hundred and eighty-three of the laws of eighteen hundred and eighty-five, entitled "An act to tax gifts, legacies and collateral inheritances in certain cases," is hereby amended so as to read as follows:

**S. 1. Transfers Taxable. — Rate. — Exemptions.** After the passage of the act all property which shall pass by will or by the intestate laws of this state, from any person who may die seized or possessed of the same while a resident of this state, or if such decedent was not a resident of this state at the time of death, which property, or any part thereof, shall be within this state, or any interest therein, or income therefrom which shall be transferred by deed, grant, sale or

gift, made or intended to take effect in possession or enjoyment after the death of the grantor or bargainor, to any person or persons, or to any body politic or corporate, in trust or otherwise, or by reason whereof any person or body politic or corporate shall become beneficially entitled, in possession or expectancy, to any property or to the income thereof, other than to or for the use of his or her father, mother, husband, wife, child, brother, sister, the wife or widow of a son, or the husband of a daughter, or any child or children adopted as such in conformity with the laws of the State of New York, or any person to whom the deceased for not less than ten years prior to his or her death stood in the mutually acknowledged relation of a parent, and any lineal descendant of such decedent born in lawful wedlock, or the societies, corporations and institutions now exempted by law from taxation by reason whereof any such person or corporation shall become beneficially entitled, in possession or expectancy, to any such property or to the income thereof, shall be and is subject to a tax of five dollars on every hundred dollars of the clear market value of such property, and at and after the same rate for any less amount, to be paid to the treasurer of the proper county, and in the city and county of New York to the comptroller thereof, for the use of the State, and all administrators, executors and trustees shall be liable for any and all such taxes until the same shall have been paid as hereinafter directed, provided that an estate which may be valued at a less sum than five hundred dollars shall not be subject to such duty or tax.

[See notes to the Act of 1885, s. 1, *ante*, p. 775 *et seq.*]

### Act Poorly Drawn.

Surrogate Ransom has used the following language concerning the statute of 1885 as amended by the statute of 1887:—

"This legislation in form and substance is justly entitled to severe condemnation for great looseness and incoherence of expression. There is no symmetry in its provisions, and it is impossible to be certain of the intention of the lawmakers in respect of the various steps which it may be necessary to take to effectuate its purpose. And if much is required by me to be done to put in motion the cumbersome and awkward machinery set up for the collection of taxes upon collateral inheritances, etc., which may seem to be unnecessary, the cause therefor must be looked for within the halls of legislation, where this anomalous statute was invented and sent forth to confuse and therefore exasperate the personal representatives of deceased persons and the courts, by its glaring inconsistencies and absurdities. After much patient reading and rereading of this act, I have concluded upon a course of procedure which I hope and believe will bear the test of superior judicial investigation. Fortunately, the constitutionality of the law cannot now be mooted. The court of appeals has settled that (*Re McPherson*, 104 N. Y. 306)." *In re Astor*, 20 Abb. N. Cas. 405, 6 Dem. Surr. 402.

**Nature. — Treaty not Applicable.**

The act of 1887 is not a "detraction tax," but a succession tax, and is therefore not included within the terms of the treaty of 1844 between the kingdom of Wurtemberg and the United States. *In re Stroebel*, 5 N. Y. App. Div. 621, 39 N. Y. Suppl. 169.

**A Continuation of the Act of 1885.**

The act of 1887 does not repeal the statute of 1885 except so far as inconsistent with it; therefore a tax due under the statute of 1885 may be collected under the statute of 1887. *In re Arnett*, 49 Hun 599, 18 N. Y. St. 576, 2 N. Y. Suppl. 428. *Warrimer v. People*, 6 Dem. Surr. (N. Y.) 211. See *In re Cager*, 111 N. Y. 343, 347, 19 N. Y. St. 497, 18 N. E. 866, affirming 46 Hun 657.

**Purpose of Amendment to Tax Property of Non-residents.**

The change in the existing law effected by N. Y. St. 1887, c. 713, was to impose a succession tax with respect to the property of non-residents which should be within the state. As the law stood under the act of 1885, it could not be gathered from its language that the legislature intended to impose a tax upon property in this state; and the act of 1887 was undoubtedly passed in order to comprehend such cases as *In re Enston*, 113 N. Y. 174. Under its provisions the question of the residence of the owner and of the legatee is of no materiality. It is the property of the decedent which is sought to be subjected to the tax. The right of the state to impose the tax is based upon its dominion over property situated within its territory. If the property consisted in personalty its legal situs would follow the domicile of its owner, and thus if he were a resident of the state become subject to taxation there. *In re James*, 144 N. Y. 6, 10, 38 N. E. 961, affirming 77 Hun 211, 27 N. Y. Suppl. 288, 6 Misc. 206.

The purpose and effect of the amendment was to subject to taxation property within the state of New York of a non-resident decedent, whether he died testate or intestate, it having been declared in *In re Enston*, 113 N. Y. 174, that such property was not taxable under the original act. *In re Gibbes*, 176 N. Y. 565, 68 N. E. 1117, affirming 84 N. Y. App. Div. 510, 83 N. Y. Suppl. 53, reversing 83 N. Y. Suppl. 56.

**A Property Tax on Non-Residents.**

As to personal property within the state of New York belonging to non-resident decedents succession is under the law of a for-

eign state and that succession cannot be taxed by New York. In such case the right of the state to impose a tax is based on its dominion over the property situated within its territory. This is a property tax on such property. *In re Embury*, 154 N. Y. 746, 49 N. E. 1096, affirming 19 N. Y. App. Div. 214, 45 N. Y. Suppl. 881.

### **Real Estate of Non-Residents.**

N. Y. St. 1887, c. 713, conferred on the surrogate jurisdiction in the case of non-resident decedents of those only who died seized of real estate within the surrogate's county; and the act of 1885 amended by the act of 1887 declared this property taxable but omitted to give the surrogate's court jurisdiction to impose the tax where the non-resident had no real estate in the state and the personal property was moved out of the state before the imposition of any tax. *In re Embury*, 154 N. Y. 746, 49 N. E. 1096, affirming 19 N. Y. App. Div. 214, 45 N. Y. Suppl. 881.

### **Covers both Testate and Intestate Non-Residents.**

The legislature did not intend to discriminate between the property of a non-resident who made a will and one who did not. The court says that the legislature intended by the first part of the sentence to provide for succession to the estates of residents to which the intestate laws of this state apply; that after providing for that class a change is made to another subject covering non-residents. *In re Romaine*, 127 N. Y. 80, 85, 27 N. E. 759, 12 L. R. A. 401, affirming 58 Hun 109.

### **Not Retroactive.**

The New York statute of 1887 is not retroactive so as to govern the assessment and collection of a tax on interests passing under the will of one who died before the passage of the act. *In re Brooks*, 6 Dem. Surre. (N. Y.) 165, 20 N. Y. St. 149.

The question of validity of a tax is not affected by the amendment made to the law of 1885 by the statute of 1887, c. 713, as the tax was adjudicated and imposed by the surrogate before the amendment took effect. *In re Cager*, 111 N. Y. 343, 347, 19 N. Y. St. 497, 18 N. E. 866, affirming 46 Hun 657.

### **Not Retroactive as to Interests under Deed.**

The act of 1887 does not apply to remainder interests created by a deed executed in 1882 which took effect in possession on the



death of the grantor in 1888. *In re Hendricks*, 3 N. Y. Suppl. 281, 1 Con. Surr. 301.

### **Gifts Causa Mortis.**

This act subjects gifts *causa mortis* to tax. *In re Edwards*, 146 N. Y. 380, 41 N. E. 89, affirming 85 Hun 436, 66 N. Y. St. Rep. 231, 32 N. Y. Suppl. 901.

### **Exemptions.**

A gift to the American Bible Society is subject to the inheritance tax. *In re Lenox*, 9 N. Y. Suppl. 895.

The Bank Clerks' Mutual Benefit Association not being exempt from taxation by its charter is not exempt from taxation on a legacy to it. *In re Jones*, 50 Hun 603, 2 N. Y. Suppl. 671, 22 Abb. N. Cas. 50, 1 Con. Surr. 125.

Under this act charitable or religious corporations are exempt from the inheritance tax only by special exemption either by charter or by some special act. So the Missionary Congregation of St. Paul the Apostle is subject to the inheritance tax. *In re Kavanagh*, 6 N. Y. Suppl. 669.

Grace Church is not exempt from taxation as a charity, as its benefits and privileges are not free to all, and hence it is not a free public charity. *In re Wolfe*, 15 N. Y. Suppl. 539, 2 Con. Surr. 600, following *Catlin v. Trustees*, 113 N. Y. 133, 20 N. E. 864.

The Wartburg Orphan Farm School is exempt from taxation under general law in New York as a "house of industry," and is therefore exempt from the collateral inheritance tax of 1887. *In re Herr*, 55 Hun 167, 7 N. Y. Suppl. 852, affirmed in 57 Hun 591, 10 N. Y. Suppl. 680.

### **Foreign Corporations not Exempt.**

The language excepting certain charities "now exempted by law" refers to exemptions under the New York statute. An exemption of a foreign corporation under the law of its origin from taxation does not render it exempt from a collateral inheritance tax in New York. *Catlin v. Trinity College Trustees*, 113 N. Y. 133, 142, 22 N. Y. St. 189, 20 N. E. 864, 3 L. R. A. 206, affirming 49 Hun 278, 17 N. Y. St. 707, 1 N. Y. Suppl. 808.

Under this act a legacy to a college located and incorporated in another state is subject to the tax. *In re McCoskey*, 1 N. Y. Suppl. 782, 22 Abb. N. Cas. 20, 6 Dem. Surr. 438.

**Municipal Corporations.**

Under this statute the exemption of "societies, corporations and institutions now exempted by law from taxation" was not intended to apply to bequests to municipal corporations. The property of municipal corporations is never included in the terms of any law providing for the imposition of a tax, not because it is exempt, but for the reason that in the nature of things it never was and never can be taxable, as this would be a tax by the government upon itself and utterly useless. Exemption implies that the person or corporation to which it applies is or would otherwise be taxable. To include public property which is not and in the nature of things cannot be taxable at all within the terms of an exemption act would be to do a vain and useless thing which cannot be imputed to the legislature. There is no sound distinction between this case and that of a bequest to the United States which was held subject to the tax. *In re Hamilton*, 148 N. Y. 310, 314, 42 N. E. 717, affirming 90 Hun 608.

**"Estate which may be Valued at a Less Sum than Five Hundred Dollars."**

This language refers to the estate given to the beneficiaries under the will or that descends under the intestate laws to the heirs. It is property or estate taken by any person or persons that is taxed and not the estate of the deceased. *McVean v. Sheldon*, 48 Hun 163.

The court holds that this language does not mean that five hundred dollars in value of every legacy is exempt, but it means simply that if the legacy is less than five hundred dollars it is exempt, if more than five hundred dollars all of it is subject to tax. *In re Sherwell*, 125 N. Y. 376, 26 N. E. 464, affirming 12 N. Y. Suppl. 200, reversing 11 N. Y. Suppl. 897.

**S. 2. Particular Estates and Remainders.** When any grant, gift, legacy or succession upon which a tax is imposed by section first of this act, shall be an estate, income or interest for a term of years or for life, or determinable upon any future or contingent event, or shall be a remainder, reversion or other expectancy, real or personal, the entire property or fund by which such estate, income or interest is supported, or of which it is a part, shall be appraised immediately after the death of the decedent, at what was the fair and clear market value thereof at the time of the death of the decedent, in the manner hereinafter provided, and the surrogate shall thereupon assess and determine the value of the estate, income or interest subject to said tax, in the manner recorded in section thirteen of this act, and the tax prescribed by this act shall be immediately due and payable to

the treasurer of the proper county, and in the city or county of New York to the comptroller thereof, and, together with the interest thereon, shall be and remain a lien on said property until the same is paid; provided that the person or persons, or body politic or corporate beneficially interested in the property chargeable with said tax, may elect not to pay the same until they shall come into the actual possession or enjoyment of such property, and in that case such person or persons or body politic or corporate, shall give a bond to the people of the state of New York in a penalty of three times the amount of the tax arising upon personal estate, with such sureties as the surrogate of the proper county may approve conditioned for the payment of said tax and interest thereon at such time or period as they or their representatives may come into the actual possession or enjoyment of such property, which bond shall be filed in the office of the surrogate of the proper county; provided further, that such person shall make a full verified return of such property to said surrogate, and file the same in his office within one year from the death of the decedent, and within that period enter into such security and renew the same every five years.

### **Vested Remainder.**

A vested remainder after a life estate is subject to the inheritance tax of 1887. *In re Vinot*, 7 N. Y. Suppl. 517.

### **Remainders not Ascertained.**

Where the property is bequeathed in trust to pay the income to the wife for life and on her death to give annuities to various persons with cross remainders contingent on survivorship *inter se*, the remainders and annuities are not subject to the inheritance tax under the New York statute of 1887, until the death of the life tenant, as it could not be known until then who would benefit by the will. *In re Roosevelt*, 143 N. Y. 120, 38 N. E. 281, 25 L. R. A. 695, affirming 27 N. Y. Suppl. 741, 76 Hun 257.

### **Valuation of Remainder Based on Actual Duration of the Life Estate.**

The testator gave property in trust to pay the income to his wife for life. If the income was insufficient to realize \$5,500 a year they are directed to use the principal to make up that amount. The testator died in 1889 and the appraiser reported that the rights of the remaindermen were uncertain and therefore not ascertainable. The widow died in 1900 and the appraiser on her death appraised her interest according to the annuity tables as of the death of the testator. The widow also actually survived longer than the annuity tables reckoned and the court holds that the valuation of the estate in remainder should be made as of the death of the life tenant. *In re Hall*, 36 Misc. Rep. 618, 73 N. Y. Suppl. 1124.

This case is decided in New York county and the surrogate notes that in other counties it has been held that the appraiser cannot hear such evidence, but that deductions must be made by the surrogate himself, and quotes *In re Millward*, 6 Misc. 425, 27 N. Y. Suppl. 286, *In re Ludlow*, 4 Misc. 594, 25 N. Y. Suppl. 989.

N. Y. St. 1887, c. 713, ss. 3, 6-8, 10, 11, 14-18, 20, 21, 23, are the same as sections of these numbers in the act of 1885.

#### **Interest. — Penalty.**

S. 4 amends N. Y. St. 1885, c. 483, s. 4, by providing that if the taxes are paid within eighteen months, no interest shall be charged and collected thereon; but if not so paid, interest at the rate of ten per cent per annum shall be charged and collected from the time said tax accrued, provided that if said tax is paid within six months from the accruing thereof a discount of five per cent shall be allowed and deducted from said tax.

S. 5 amends N. Y. St. 1885, c. 483, s. 5, by providing that the penalty of ten per cent shall not be charged where the estate by reason of litigation cannot be settled at the end of eighteen months from the death of the decedent.

Litigation among distributees of an estate to determine their respective shares is "an unavoidable cause of delay in settling the estate" within the terms of section 5, and therefore in such case interest should be charged only from the expiration of eighteen months from the death of the decedent. *In re Moore*, 90 Hun 162, 35 N. Y. Suppl. 782.

#### **Adopted Children. — Relation of Parent.**

S. 9 adds to the exception the brother, sister, "child or children adopted by such decedent according to law, or any person to whom the deceased for not less than ten years prior to his or her death, stood in the mutually acknowledged relation of a parent."

#### **The Exemption to Adopted Children.**

The testatrix died in 1886 and the court holds that the statute of 1887 is not retroactive and does not apply to the case. The fact that the language in the statute of 1887 declares that the statute of 1885 "is amended so as to read as follows," is immaterial, as is also the fact that the statute of 1887 closes with the words "all acts and parts of acts inconsistent with the provisions of this act are hereby repealed." *In re Miller*, 110 N. Y. 216, 223, 18 N. E. 139, affirming 47 Hun 394.

The same result was reached in *In re Thompson*, 14 N. Y. St. Rep. 487, *In re Ryan*, 3 N. Y. Suppl. 136. See also, *Kissam v. People*, 3 N. Y. Suppl. 135, 6 Dem. Surr. 171.

S. 12 extends the time for making application for refund to five years from the date of payment.

### **Appraisal.**

S. 13 adds to N. Y. St. 1885, c. 483, s. 13, "and the value of every future or contingent or limited estate, income or interest shall, for the purposes of this act, be determined by the rule, method and standards of mortality and of value, which are employed by the superintendent of the insurance department in ascertaining the value of policies of life insurance and annuities, for the determination of the liabilities of life insurance companies, save that the rate of interest to be assessed in computing the present value of all future interests and contingencies shall be five per cent per annum; and the superintendent of the insurance department shall, on the application of any surrogate, determine the value of such future or contingent or limited estate, income or interest, upon the facts contained in such report, and certify the same to the surrogate, and his certificate shall be conclusive evidence that the method of computations adopted therein is correct."

[This section was amended by St. 1889, c. 307, 1891, c. 34, and 1892, c. 165.]

There is an elaborate opinion as to the practice on appraisal under the New York statute of 1887 in *In re Astor*, 20 Abb. N. Cas. 405, 6 Dem. Surr. 402, 14 N. Y. St. 478, 2 N. Y. Suppl. 630.

S. 17 was amended by St. 1892, c. 168.

S. 19 refers to section 17 instead of section 16.

**S. 22. Fees.** The treasurer of each county and the comptroller of the city and county of New York, shall be allowed to retain, on all taxes paid and accounted for by him each year, under this act, in addition to his salary or fees now allowed by law, five per cent on the first fifty thousand dollars so paid and accounted for by him, three per cent on the next fifty thousand dollars so paid and accounted for by him, and one per cent on all additional sums so paid and accounted for by him.

**S. 24. Use of Receipts.** All taxes levied and collected under this act shall be paid into the treasury of the state, for the uses of the state, and shall be applicable to the payment of the general expenses of the state government, and to such other purposes as the legislature may by law direct.

**S. 25. Repeal.** All acts or parts of acts inconsistent with the provisions of this act are hereby repealed.

[See amendment by St. 1890, c. 479.]

**Amendments to the Acts of 1885 and 1887.**

N. Y. St. 1889, c. 307, approved May 27, 1889, amends N. Y. St. 1887, c. 713, s. 13, by adding thereto provisions for the appointment by the surrogate of the city and county of New York, of a clerk for assessing the inheritance taxes.

N. Y. St. 1889, c. 479, approved June 14, 1889, amended N. Y. St. 1887, c. 713, s. 25, to read as follows: "All acts and parts of acts inconsistent with the provisions of this act are hereby repealed, but this act shall apply to all estates of deceased persons where no assessment of the tax has been made to which such estate or estates are liable under the provisions of the foregoing act."

The assessment having been made in a case at the time of the passage of the act of 1889, the exemption to adopted children provided by the statute of 1887 became operative and two legatees who stood in the mutually acknowledged relation of a child to the testator stood in the same situation as if the clause exempting them had been contained in the original act. Under the saving clause in the statute of 1892 these rights to exemption were not modified. *In re Thomas*, 3 Misc. Rep. 388, 24 N. Y. Suppl. 713.

St. 1890, c. 553, provides that the collateral inheritance tax shall not apply to certain corporations.

This statute giving certain exemptions is prospective in operation and does not apply to a tax which became due and payable before its passage. *Sherrill v. Christ Church*, 121 N. Y. 701, 703, 25 N. E. 50, reversing *In re Van Kleeck*, 55 Hun. 472.

**Foreign Corporations not Exempt.**

This act exempts from taxation only domestic corporations. The fact that a foreign charitable corporation was given a limited privilege of taking and holding real and personal property in New York did not relieve that corporation from a legacy due it; that was an enabling statute merely. The corporation remained a foreign corporation as before, but possessing in this state a privilege granted by that statute. *In re Prime*, 136 N. Y. 347, 363, 32 N. E. 1091, 18 L. R. A. 713, affirming 64 Hun. 50.

N. Y. St. 1891, c. 34, approved February 25, 1891, provides that appraisers shall "value the real estate at its full and true value, taking into consideration actual sales of neighboring real estate similarly situated, during the year immediately preceding the date of such appraisal, if any; and they shall value all such property, stocks, bonds or securities as are customarily bought or sold in open markets in the city of New York or elsewhere, for the day on which such appraisal or report may be required, by ascertaining the range of the market and the average of prices as thus found, running through a reasonable period of time."

N. Y. St. 1891, c. 215, s. 1, approved April 20, 1891, amends N. Y. St. 1885, c. 483, by including in the transfers subject to tax a "deed, grant, sale or gift made in contemplation of the death of the grantor or bargainor;" and providing for a tax of one per cent on direct descendants, brothers and sisters, with an exemption of estates which may be valued at a less sum than ten thousand dollars.

### **Continuity of Law.**

N. Y. St. 1891, c. 215, which amends N. Y. St. 1885, c. 483, s. 1, "so as to read as follows," operates as a repeal of inconsistent provisions in the former law, and where the amended act reenacts provisions in the former law the law will be regarded as having been continuous, and the new enactment as to such part will not operate as a repeal so as to affect a duty accrued under the prior law, although as to all new transactions the later law will be referred to as the ground of obligation. *In re Prime*, 136 N. Y. 347, 355, 32 N. E. 1091, 18 L. R. A. 713, affirming 64 Hun. 50.

### **Foreign Property of Resident.**

Promissory notes, bonds and mortgages belonging to a resident of New York, which at the time of the testator's death were in the hands of his agent in Michigan, are taxable under the statute of 1885, as amended by the statute of 1891, chapter 215. *In re Corning*, 3 Misc. Rep. 160, 51 N. Y. St. 265, 23 N. Y. Suppl. 285.

### **The United States not Exempt.**

N. Y. St. 1885, c. 483, as amended by St. 1891, c. 215, exempted from the inheritance tax societies, corporations and institutions now exempted by law from taxation and the court holds that the United States is not a corporation exempt by law from taxation. It is a settled doctrine of New York that exemption from taxation is granted only to domestic corporations and this doctrine is applied to their inheritance tax law in the *Matter of Prime*, 136 N. Y. 347. The legislature intended to allow an exemption only in favor of such corporations as it had itself created and which might reasonably be supposed to be the special objects of its solicitude and bounty. We think it was not intended to apply the exemption to a purely political or governmental corporation like the United States. *United States v. Perkins*, 163 U. S. 625, affirming *In re Merriam*, 141 N. Y. 479, 36 N. E. 505.

N. Y. St. 1891, c. 215, s. 2, approved April 20, 1891, provides that the record book in which receipts are to be kept as provided in section 23 of N. Y. St. 1885, c. 483, shall be labeled "legacy and inheritance tax."

N. Y. St. 1891, c. 215, s. 3, amends the title of N. Y. St. 1885, c. 483, to read as follows: "An act to tax gifts, legacies and inheritances."

N. Y. St. 1892, c. 167, approved March 19, 1892, amended N. Y. St. 1887, c. 713, s. 13, by providing that the appraiser is authorized to summon witnesses and take testimony and make a report thereof in writing to the surrogate.

N. Y. St. 1892, c. 168, approved March 19, 1892, amends N. Y. St. 1887, c. 713, s. 17, by adding that costs may be fixed by the surrogate but shall not exceed in any case one hundred dollars where there has been no contest and two hundred and fifty dollars where there has been a contest.

N. Y. St. 1892, c. 169, approved March 19, 1892, amends N. Y. St. 1885, c. 483, s. 1, by adding an exemption of gifts to bishops or religious corporations.

N. Y. St. 1892, c. 443, approved May 3, 1892, amended N. Y. St. 1885, c. 483, s. 13, by providing an inheritance tax clerk for the surrogate of Kings County.

## THE ACT OF 1892.

N. Y. St. 1892, c. 399. Passed March 19, 1892, in effect May 1, 1892.

**S. 1. Taxable transfers.** A tax shall be and is hereby imposed upon the transfer of any property, real or personal, of the value of five hundred dollars or over, or of any interest or income therefrom, in trust or otherwise, to persons or corporations not exempt by law from taxation on real or personal property in the following cases:

(1) When the transfer is by will or by the intestate laws of this state from any person dying seized or possessed of the property while a resident of the state.

(2) When the transfer is by will or intestate law, of property within the state, and the decedent was a non-resident of the state at the time of his death.

(3) When the transfer is of property made by a resident or by a non-resident, when such non-resident's property is within this state, by deed, grant, bargain, sale or gift made in contemplation of the death of the grantor, vendor or donor, or intended to take effect, in possession or enjoyment, at or after such death. Such tax shall also be imposed when any such person or corporation becomes beneficially entitled, in possession or expectancy, to any property or the income thereof by any such transfer, whether made before or after the passage of this act. Such tax shall be at the rate of five per cent upon the clear market value of such property, except as otherwise prescribed in the next section.

### "Five Hundred Dollars or Over."

Where the estate passing to the hands of a public administrator amounts to eleven hundred (\$1100) dollars nieces are taxable, although the share which each takes is less than five hundred (\$500) dollars. The court follows *In re Corbett*, 171 N. Y. 516, holding that it is the aggregate amount of the personal property left by the decedent and not the amount of the particular estate transferred to any beneficiary which determines whether the tax shall be imposed or not. The statute of 1892 changed the law in this respect.



"Prior to the amendment of the Inheritance Tax Law by chapter 399 of the laws of 1892 it was held that the law imposed a tax upon the right of succession to the property of the testator or intestate which vested in the successors severally. The act of 1892 worked a complete change in the manner of assessing the tax." *In re Costello*, 189 N. Y. 288, 292, 82 N. E. 139, modifying 117 N. Y. App. Div. 807, 103 N. Y. Suppl. 6.

To the same effect see *In re Flynn*, 30 N. Y. Suppl. 388; *In re Hall*, 88 Hun 68, 68 N. Y. St. Rep. 538, 34 N. Y. Suppl. 616.

Under the statute of 1892, chapter 399, the share of one who stood in the relation of a child to the testator should be added to the shares of nephews and their wives in order to make the aggregate estate transferred exceed five hundred (\$500) dollars. While the share of this adopted child is not taxable, yet under the authorities she is not a person "specifically exempt from taxation," as is a bishop or a religious corporation, for the reason that if the estate had been sufficiently large to bring her share within the provisions of the law she would then have been a taxable person under it. *In re McMurray*, 96 N. Y. App. Div. 128, 89 N. Y. Suppl. 71, citing *In re Corbett*, 171 N. Y. 516, 64 N. E. 209, affirming 55 N. Y. App. Div. 124, 67 N. Y. Suppl. 46; *In re Hoffman*, 143 N. Y. 327, 38 N. E. 311; *In re Garland*, 88 N. Y. App. Div. 380, 84, N. Y. Suppl. 630. See *contra*, *In re Bliss*, 6 N. Y. App. Div. 192, 39 N. Y. Suppl. 875.

### **"Property within the State."**

The court notes the language of the N. Y. St. 1892, c. 399, as confining the tax on non-residents to "property within the state," and refers to section 22 of the act, which defines the word "property" as meaning all property or interest therein "over which this state had any jurisdiction for the purposes of taxation." *In re Bronson*, 150 N. Y. 1, 4, 44 N. E. 707, 34 L. R. A. 238, 55 Am. St. Rep. 632, modifying 1 N. Y. App. Div. 546, 37 N. Y. Suppl. 476.

### **Where no Property in State when Statute was Passed.**

While the New York statute of 1887 was in effect, the testator, a non-resident, died leaving deposits and stocks on deposit in New York. The executors promptly withdrew them and the court holds that the tax cannot subsequently be collected under the laws of 1892, as there was then no property of the estate in New

York, and the tax cannot be legally imposed unless the statute, in addition to creating a tax, provided for an officer or tribunal who shall impose and assess the property on notice to the owner. *In re Embury*, 154 N. Y. 746, 49 N. E. 1096, affirming 19 N. Y. App. Div. 214, 45 N. Y. Suppl. 881.

**"Intended to Take Effect . . . at or after such Death."**

Where a grantor by a trust deed conveys property to trustees in trust to pay an annuity to his daughter for life and the balance of the income to the grantor, and on his death to pay over the principal as provided in the trust deed, this transfer to the remaindermen on his death is intended to "take effect in possession or enjoyment at or after the death" of the donor, and was therefore subject to the inheritance tax under N. Y. St. 1892, c. 399, s. 1, the trust deed being dated in September, 1892, and the testator dying in 1898. *In re Cruger*, 166 N. Y. 602, 59 N. E. 1121, affirming 54 N. Y. App. Div. 405, 66 N. Y. Suppl. 636.

**"When any . . . Person . . . Becomes Beneficially Entitled."**

The testator died in 1884, and the life tenant died in 1889, and the court holds that the provisions of the statute of 1892 did not relate back to the possession taken in December, 1889, under the statute of 1892, chapter 399, section 1, taxing transfers as of the time when the transferee "becomes beneficially entitled." *In re Travis*, 19 Misc. Rep. 393, 44 N. Y. Suppl. 349, 2 Gibbons 91.

**"Whether made before or after the Passage of this Act."**

This language refers solely to gifts *causa mortis* and does not apply to the case of a decedent dying before the passage of the statute. It is of no consequence that the will was executed before the statute if the death occurs after, and the same rule is intended to be explicitly applied to grants *causa mortis*. The transfer in both instances is to date from death, the one event which makes it operative and effective. *In re Seaman*, 147 N. Y. 69, 77, 41 N. E. 401, reversing 87 Hun 619.

*In re Seaman* was approved and applied to a statute containing no express provision making the statute applicable whether the transfer was made before or after the passage of the act, in *Crocker v. Shaw*, 174 Mass. 266, 267, 268.

This statute does not apply to gifts *inter vivos* made before the passage of the act. *In re Birdsall*, 22 Misc. Rep. 180, 49 N. Y. Suppl. 450, 2 Gibbons 293.

Where the testator died in 1873 and the remaindermen became entitled in 1893 on the death of the life tenant, no tax can be levied. *In re Forsyth*, 10 Misc. Rep. 477, 32 N. Y. Suppl. 175. Where the testator died in 1884 and the life tenant died in 1893, but where the interests of the remaindermen became vested at the testator's death, therefore they are not subject to any tax under the provisions of the statute. *In re Travis*, 19 Misc. Rep. 393, 44 N. Y. Suppl. 349, 2 Gibbons, 91.

### **Bank Deposit of Non-resident.**

Where a non-resident deposited money in a New York bank it is subject to taxation in New York under the act of 1892, although the money of the decedent was mingled with those of an estate he represented as trustee. All the justices did not agree with the reasoning given by Vann, J., who wrote the opinion, but they are of the opinion that a deposit of money in a bank, although technically a debt, is still money for all practical purposes and as such is taxable under the transfer tax act. *In re Houdayer*, 150 N. Y. 37, 41, 44 N. E. 718, 34 L. R. A. 235, 55 Am. St. Rep. 642, reversing 3 N. Y. App. Div. 474, 38 N. Y. Suppl. 323.

### **Bonds of Non-residents Issued by Domestic Corporation.**

The bonds of a domestic corporation held outside the state by non-residents do not represent "property within the state" in any conceivable sense. The property they represented consisted in the debt of their maker, and that species of property is a chose in action belonging to the owner and inseparable from his personalty. *In re Bronson*, 150 N. Y. 1, 8, 44 N. E. 707, 34 L. R. A. 238, 55 Am. St. Rep. 632, modifying 1 N. Y. App. Div. 546; 37 N. Y. Suppl. 476.

### **Stock of Non-resident.**

Corporate shares must be regarded as property within the broad meaning of that term, hence it cannot be said, if the property represented by a share of stock has its legal situs either where the corporation exists, or at the holder's domicile, that the state is without jurisdiction over it for taxation purposes. Therefore stock held by a non-resident in a New York corporation is subject to tax under N. Y. St. 1892.

"The attitude of a holder of shares of capital stock is quite other than that of a holder of bonds, towards the corporation which

issued them. While the bondholders are simply creditors, whose concern with the corporation is limited to the fulfilment of its particular obligation, the shareholders are persons who are interested in the operation of the corporate property and franchises and their shares actually represent undivided interests in the corporate enterprise. The corporation has the legal title to all the properties acquired and appurtenant; but it holds them for the pecuniary benefit of those persons who hold the capital stock. They appoint the persons to manage its affairs; they have the right to share in surplus earnings, and after dissolution they have the right to have the assets reduced to money and to have them ratably distributed. Each share represents a distinct interest in the whole of the corporate property." *Per* Gray, J., in *In re Bronson*, 150 N. Y. 1, 8, 44 N. E. 707, 34 L. R. A. 238, 55 Am. St. Rep. 632, modifying 1 N. Y. App. Div. 546, 37 N. Y. Suppl. 476.

### **Legacy to Lineals of Proceeds of Real Estate.**

Under the New York statute of 1892, chapter 399, legacies to lineal descendants out of the proceeds of testator's real estate are exempt. *In re Cobb*, 14 Misc. Rep. 409 71 N. Y. St. 506, 36 N. Y. Suppl. 448.

### **Gifts Inter Vivos.**

It was claimed that the statute did not impose a tax upon the transfer of property by gifts *inter vivos*, but was confined to gifts *causa mortis*. The court holds that the words "made in contemplation of death" show that the statute covered gifts *inter vivos*. *In re Birdsall*, 22 Misc. Rep. 180, 49 N. Y. Suppl. 450, 462, 2 Gibbons 293.

### **Exercise of Power Created before the Passage of the Statute.**

Where the testator died in 1877 leaving the power of appointment which was exercised by will in 1896, there can be no inheritance tax on the property passing by the power, as the source of title is the original will of 1877, and into that instrument must be read the names of the appointees, although designated by a later instrument. *In re Harbeck*, 161 N. Y. 211, 55 N. E. 850, reversing 43 N. Y. App. Div. 188, 59 N. Y. Suppl. 362. See, however, *In re Brooks*, 65 N. Y. St. Rep. 255, 32 N. Y. Suppl. 176, 1 Gibbons 188.

### **Constitutionality.**

N. Y. St. 1892, c. 399, is constitutional. *In re Gould*, 156 N. Y. 423.

**When Took Effect.**

N. Y. St. 1892, c. 399, took effect May 1, 1892. *Matter of Fayerweather*, 143 N. Y. 114, 38 N. E. 278.

**Purpose and Construction of Statute.**

This act was enacted as a general act in relation to the taxation of transfers of property from a decedent. It was intended as a general law of the state upon the subject, and its exemption of any religious corporation should receive the same construction which a similar provision in a prior act had received. *In re Balleis*, 144 N. Y. 132, 134, 38 N. E. 1007, affirming 78 Hun 275.

**Continuous with Prior Legislation.**

The statute of 1892, chapter 399, repealed the act of 1885, without any saving clause; still the tax law has been continuously in force to the present time since 1885, because of the statutory construction law statute of 1892, chapter 677. Therefore the surrogate had jurisdiction to make an order assessing the inheritance tax in 1901 on the estate of one who died in 1888. *In re Jones*, 54 Misc. 202, 105 N. Y. Suppl. 932.

**Not Retroactive.**

The testator, a resident of New Jersey, died there March 19, 1782, leaving personal property in New York state, and some of the assets were not removed to New Jersey until after May 1, 1892, when the New York statute of 1892, chapter 399, became operative. The court holds that the fact that the property was in New York when the statute of 1892 went into effect does not make it subject to tax, as this would render the statute retroactive. "If the right of taxation because of decease does not exist at the time of death it never can be thereafter imposed upon the ground of such death." *In re Pettit*, 171 N. Y. 654, 63 N. E. 1121, affirming 65 N. Y. App. Div. 30, 72 N. Y. Suppl. 469. To the same effect see *In re Fayerweather*, 143 N. Y. 114, 38 N. E. 278.

The testator died in 1887 and the appraisal was made in that year and appeal was taken from the appraisal and decided in 1890. The statute of March 19, 1892, was passed, providing that "any property heretofore devised or bequeathed or which may hereafter be devised or bequeathed to any person who is a bishop or to any religious corporation, shall be exempt" from taxation. As the assessment had been entirely completed so far as the surrogate was con-

cerned, prior to the enactment of the exemption clauses, the legatees can derive no benefit therefrom. *In re Wolfe*, 66 Hun 389, 29 Abb. N. Cas. 340, 21 N. Y. Suppl. 515, affirming 15 N. Y. Suppl. 539 (s. c. 137 N. Y. 205, 33 N. E. 156).

**S. 2. Exceptions and limitations.** When the property or any beneficial interest therein passes by any such transfer to or for the use of any father, mother, husband, wife, child, brother, sister, wife or widow of a son or the husband of a daughter, or any child or children adopted as such in conformity with the laws of this state, of the decedent, grantor, donor or vendor, or to any person to whom any such decedent, grantor, donor or vendor for not less than ten years prior to such transfer stood in the mutually acknowledged relation of a parent or to any lineal descendant of such decedent, grantor, donor or vendor born in lawful wedlock, such transfer of property shall not be taxable under this act, unless it is personal property of the value of ten thousand dollars or more, in which case it shall be taxable under this act at the rate of one per centum upon the clear market value of such property. But any property heretofore or hereafter devised or bequeathed to any person who is a bishop or to any religious corporation shall be exempted from and not subject to the provisions of this act.

### **Adopted Children.**

Rights to exemption of adopted children under the act of 1887 are not modified by the act of 1892. *In re Thomas*, 3 Misc. 388, 24 N. Y. Suppl. 713.

### **"Unless it is Personal Property of the Value of Ten Thousand Dollars or More."**

Under N. Y. St. 1892, c. 399, s. 22, the purpose of the entirely new provision there is to compel a change of the previous construction of the court which applied the ten thousand dollar exemption to the share of each beneficiary and required the court to attach the limitation to the estate of the decedent and not to the several and particular estates passing to the successor. Therefore, a devise to the mother of the decedent is taxable at one per cent although itself of the value of less than ten thousand dollars, because the aggregate transfers by will to taxable persons exceeded that amount. *In re Hoffman*, 143 N. Y. 327, 38 N. E. 311, modifying 76 Hun 399, 5 Misc. 439. *In re Taylor*, 6 Misc. Rep. 277, 27 N. Y. Suppl. 232. See, however, *In re Skillman*, 66 N. Y. St. Rep. 140, 10 Misc. Rep. 642, 32 N. Y. Suppl. 780.

The interest of an infant in the proceeds of the sale of real estate in partition is not exempt as real property under the statute. The transfer tax act taxes, not the property, but the individual who

receives the property, and in this case what the individual receives is money and not real estate. *In re Stiger*, 7 Misc. Rep. 268, 28 N. Y. Suppl. 163.

**"To any Person who is a Bishop."**

The testator died in 1896 leaving a legacy "to Bishop William Taylor, or his living successor, to be used in his African mission work." Bishop Taylor died before the testator, and his living successor was a resident of New Jersey and not of New York. It was argued that the bishop took this in his official capacity and that it was therefore subject to taxation as a charitable gift to a foreign corporation. But the court holds that the office of bishop is not a state office and that the bishop is not a corporation sole. The state does not recognize the existence of any ecclesiastical office, the result of which is to give to the holders of it the right of perpetual succession, or any other rights similar to those which are enjoyed by corporations. The designation of a person as a bishop is a mere *descriptio personæ*. Therefore, this legacy is exempt from taxation under the statute of 1892 exempting from the tax legacies "to any person who is a bishop, or to any religious corporation." *In re Palmer*, 158 N. Y. 669, 52 N. E. 1125, affirming 33 N. Y. App. Div. 307, 53 N. Y. Suppl. 847.

**"To any Religious Corporation." — Foreign Religious Corporations not Exempted.**

The exemption in this act of certain religious corporations applies only to domestic corporations. *In re Balleis*, 144 N. Y. 132, 38 N. E. 1007, affirming 78 Hun 275. *In re Smith*, 77 Hun 134, 28 N. Y. Suppl. 476. *In re Fayerweather*, 30 N. Y. Suppl. 273, 31 Abb. N. Cas. 287. *In re Taylor*, 80 Hun 589, 30 N. Y. Suppl. 582.

The American Baptist Publication Society was empowered by the New York statute to take and hold property in New York state, but the court holds that this right alone does not relieve the respondent from taxation. *In re Wolfe*, 23 Misc. Rep. 439, 52 N. Y. Suppl. 415, 2 Gibbons 446.

**S. 3. Lien of tax and payment thereof.** Every such tax shall be and remain a lien upon the property transferred until paid and the person to whom the property is so transferred, and the administrators, executors and trustees of every estate so transferred shall be personally liable for such tax until its payment. The tax shall be paid to the treasurer or comptroller of the county of the surrogate having jurisdiction as herein provided; and said treasurer or comptroller shall

give, and every executor, administrator or trustee shall take, duplicate receipts from him of such payment, one of which he shall immediately send to the comptroller of the state, whose duty it shall be to charge the treasurer or comptroller so receiving the tax with the amount thereof and to seal said receipt with the seal of his office and countersign the same and return it to the executor, administrator or trustee, whereupon it shall be a proper voucher in the settlement of his accounts; but no executor, administrator or trustee shall be entitled to a final accounting of an estate in settlement of which a tax is due under the provisions of this act unless he shall produce a receipt so sealed and countersigned by the comptroller or a copy thereof certified by him, or unless a bond shall have been filed as prescribed by section seven of this act. All taxes imposed by this act shall be due and payable at the time of the transfer, provided, however, that taxes upon the transfer of any estate, property or interest therein limited, conditioned, dependent or determinable upon the happening of any contingency or future event by reason of which the fair market value thereof can not be ascertained at the time of the transfer as herein provided shall accrue and become due and payable when the persons or corporations beneficially entitled thereto shall come into actual possession or enjoyment thereof.

#### **When Tax Accrues on Interests Unascertained.**

The court remarks that the legislature under the statute of 1892 has given a practical construction to its previous legislation on the subject when it provides that where the fair market value of the property or interest cannot be ascertained at the time of the transfer, the tax shall become due and payable when the beneficiary shall come into actual possession or enjoyment. *In re Roosevelt*, 143 N. Y. 120, 38 N. E. 281, 25 L. R. A. 695, affirming 27 N. Y. Suppl. 741, 76 Hun 257.

Where the testator left a fund to pay the income to her mother for life and on her death to the daughter, and on the death of the daughter the principal to go to her issue, if any, and in default of issue to certain other persons, and where the will also provided that if the daughter were not living at the mother's death the principal sum should then be paid over to the issue of the daughter, if any, or to certain other persons, the estates of the daughter and her child were not taxable until the death of the mother. She ought not to be taxed until events make it certain that there is an actual and beneficial transfer of the property to her. The tax should be confined to a present enjoyment or a fixed and absolute right of future enjoyment. *In re Hoffman*, 143 N. Y. 327, 38 N. E. 311, modifying 76 Hun 399, 5 Misc. 439.

#### **To Survivors, on Death of Life Tenant.**

A gift to survivors on the death of the life tenant tax accrues then. *In re Davis*, 149 N. Y. 539, 44 N. E. 185, affirming 91 Hun 53.



Where a devise is given to a sister for life and on her death to certain survivors or their issue as set forth in the will, the court finds that no tax can be assessed on the remainder until it is known to whom the property would pass. *In re Plum*, 37 Misc. Rep. 466, 75 N. Y. Suppl. 940.

The will of a testator provided for two life estates and on the death of the survivor he gave the remainder to one E., if he be then living, but if he is not living at that time then the remainder is given to other persons. Under the statute of 1887, chapter 713, the devise to E. is not presently taxable. *In re Westcott*, 11 Misc. Rep. 589, 33 N. Y. Suppl. 426, following *In re Hoffman*, 143 N. Y. 327, 38 N. E. 311.

### **Life Estate in Remainder.**

Where a testator gives to his wife for life and on her death a life estate to G., the estate to G. comes within the statutory definition of a vested remainder, but it is very different from a case where the will gives a life estate to A. and the remainder to B. and his heirs. At the present time G. has no estate that she could sell to any one at any price, and therefore the inheritance tax must be postponed until the death of the life tenant. *In re Westcott*, 11 Misc. Rep. 589, 33 N. Y. Suppl. 426.

S. 4 combines the provisions of N. Y. St. 1887, c. 713, ss. 4 and 5.

This section does not apply where the decedent died in 1890. *In re Fayerweather*, 143 N. Y. 114, 38 N. E. 278.

### **Interest on Remainder from the Death of the Life Tenant.**

Where a will left property to a life tenant, and on her death to her children who might be living at the time of her death, it was not certain until that time whether the property would be subject to an inheritance or transfer tax, or whether the remainderman would ever be entitled to the possession of the property and thus become liable to be taxed. Until that time no tax accrued. Therefore interest at six per cent should be charged only from the death of the life tenant. *In re Davis*, 149 N. Y. 539, 548, 44 N. E. 185, affirming 91 Hun. 53. (This result would now be different as a result of the act of 1899.)

### **Awaiting Disposition of Will Contest.**

Where litigation over the probate of a will is pending it cannot be known whether the property will pass under the will or as in

case of intestacy, and until this fact is ascertained it is impracticable to proceed to fix a transfer tax under the act of 1892, since the ascertainment of the persons entitled to the property of a decedent must precede the imposition of any tax. *In re Westurn*, 152 N. Y. 93, 99, 46 N. E. 315, reversing 8 N. Y. App. Div. 59.

S. 5 combines N. Y. St. 1887, c. 713, ss. 6 and 7.

S. 6 amends N. Y. St. 1887, c. 713, s. 10, by adding to it provisions authorizing the state comptroller to refund or require the refunding of taxes erroneously paid.

**The debts of a testator**, it plainly appears from the sixth section of N. Y. St. 1892, are to be deducted in arriving at the valuation of the property and in fixing the tax. *In re Westurn*, 152 N. Y. 93, 100, 46 N. E. 315, reversing 8 N. Y. App. Div. 59. See, however, *In re Ludlow*, 4 Misc. Rep. 594, 25 N. Y. Suppl. 989.

S. 7 allows parties interested to defer payment on proper security until they come into actual possession of the property transferred.

S. 8 practically continues the provisions of N. Y. St. 1887, c. 713, s. 3.

S. 9 provides for the payment of the tax on transfer of stock, and that no safe deposit company or other institution or person holding securities or assets of a decedent shall deliver or transfer the same except on five days' notice to the county treasurer or comptroller. Failure to observe these provisions renders the corporation or person liable to the tax. [Compare N. Y. St. 1887, c. 713, s. 11.]

S. 10 gives the surrogate's court jurisdiction to appoint trustees or to give ancillary letters to hear and determine all questions arising under the provisions of the act, and to do any act in relation thereto authorized by law to be done by a surrogate, and other matters or proceedings coming within his jurisdiction. [See N. Y. St. 1887, c. 713, s. 15.]

### **Exclusive.**

The jurisdiction given to the surrogate to determine and assess the inheritance tax is exclusive and cannot be exercised by the supreme court on a petition to construe a will. *Weston v. Goodrich*, 86 Hun. 194, 33 N. Y. Suppl. 382.

### **Property in Two Counties.**

The jurisdiction to assess a tax on a non-resident depends on the appointment of an ancillary administrator. Where the property of a non-resident is situated in two counties and an ancillary administrator has been appointed in one county, there can be no

appointment in another county and the surrogate of the county which first obtained jurisdiction is the only surrogate who can assess the tax. *In re Hathaway*, 27 Misc. Rep. 474, 59 N. Y. Suppl. 166.

### **Power to Order Refund.**

Under this section the surrogate has power to order the county treasurer to refund taxes in his hands, the amount of the tax not having been paid into the state treasury. *In re Park*, 8 Misc. Rep. 550, 29 N. Y. Suppl. 1081.

**S. 11. "Appointment of appraisers."** The surrogate, upon the application of any interested party, including county treasurers, or the comptroller of New York city, or upon his own motion, shall, as often as and whenever occasion may require, appoint a competent person as appraiser, to fix the fair market value, at the time of the transfer thereof, of property of persons whose estates shall be subject to the payment of any tax imposed by this act. If the property upon the transfer of which a tax is imposed shall be an estate, income or interest for a term of years, or for life, or determinable upon any future or contingent estate, or shall be a remainder or reversion or other expectancy, real or personal, the entire property or fund by which such estate, income or interest is supported, or of which it is a part, shall be appraised immediately after such transfer, or as soon thereafter as may be practicable, at the fair and clear market value thereof at that time, provided, however, that when such estate, income or interest shall be of such a nature that its fair and clear market value can not be ascertained at such time, it shall be appraised in like manner at the time when such value first became ascertainable. The value of every future or contingent or limited estate, income, interest or annuity dependent upon any life or lives in being shall be determined by the rule, method and standards of mortality and value employed by the superintendent of insurance in ascertaining the value of policies of life insurance and annuities for the determination of liabilities of life insurance companies; except that the rate of interest for computing the present value of all future and contingent interests or estates shall be five per centum per annum.

Deduction of debts and expenses on appraisal, see notes to section 6, *ante*.

### **Appraisal of Uncertain Interests.**

Where a life estate is created subject to determination on the remarriage of the life tenant, it is impossible on the death of the testator to ascertain the value of the interest ultimately going to the remainderman. Therefore the value should be appraised under the N. Y. St. 1892, "as soon as may be practicable," which is on the death of the life tenant. Still, whenever the appraisal is made, the value of the property is to be appraised according to the fair

and clear market value of the interest at the time of the death of the testator. *In re Sloane*, 154 N. Y. 109, 47 N. E. 978, 19 N. Y. App. Div. 411, 46 N. Y. Suppl. 264.

### **When May Appoint. — Expenses of Litigation.**

It was claimed that the surrogate under this section had no power to appoint an appraiser or to fix the tax until the fact whether there were claims against the estate had been ascertained in due course. But the statute provides that the surrogate may appoint an appraiser "as often as and whenever occasion may require." It seems to be left to his sound discretion when the power shall be exercised.

The sums expended by the heirs in successfully testing the probate of a will are properly disallowed, as they are not claims existing against the decedent or his property, although the court charged certain costs and allowances in their favor upon the estate, as this was practically a charge upon their own property for the benefit of their attorneys. *In re Westurn*, 152 N. Y. 93, 102, 46 N. E. 315, reversing 8 N. Y. App. Div. 59.

### **Special Guardian.**

Where the will left all the property to the wife for life and the remainder to an infant, and where it appeared that the infant's estate could not be appraised at the present time, it is improper to appoint a special guardian for the infant. *In re Post*, 5 N. Y. App. Div. 113, 38 N. Y. Suppl. 977.

### **Reappraisal.**

The authority to a surrogate to appoint an appraiser "as often as occasion may require" has for its object to collect the tax on the whole taxable estate; and where all the assets have been appraised and the tax fixed to cover any omission by additional or supplemental appraisals and when such omissions are discovered upon the new appraisal, property of the decedent which had not been appraised at the previous proceeding was properly included. But the appraiser has no authority to increase the appraisal on property which was included in the former appraisal, even although the executor had since the former appraisal actually received for such property respective sums for which they were valued in the new appraisal. The court treats this difference as an increase in value subsequent to the date of the death of the decedent. *In re*

Rice, 56 N. Y. App. Div. 253, 68 N. Y. Suppl. 1147, affirming 61 N. Y. Suppl. 911.

On the reappraisal the appraiser should not increase the valuations on property already appraised, as reappraisals are intended only to reach property omitted in former appraisals and the valuation is to be measured by the value at the death of testate. *Matter of Rice*, 56 N. Y. App. Div. 253, 68 N. Y. Suppl. 1147, affirming 61 N. Y. Suppl. 911.

S. 12 practically continues the provisions of N. Y. St. 1887, c. 713, s. 13.

**S. 13. Determination by surrogate.** The report of the appraiser shall be filed in the office of the surrogate, and from such report and other proof relating to any such estate before the surrogate, the surrogate shall forthwith as of course determine the cash value of all estates and the amount of tax to which the same are liable; or, the surrogate may so determine the cash value of all such estates and the amount of tax to which the same are liable without appointing an appraiser. The superintendent of insurance shall, on the application of any surrogate, determine the value of any such future or contingent estates, income or interest limited, contingent, dependent or determinable upon the life or lives of persons in being, upon the facts contained in any such appraiser's report, and certify the same to the surrogate, and his certificate shall be conclusive evidence that the method of computation adopted therein is correct. Any person dissatisfied with the appraisement or assessment and determination of tax may appeal therefrom to the surrogate within sixty days from the fixing, assessing and determination of tax by the surrogate as herein provided, upon filing in the office of the surrogate a written notice of appeal, which shall state the grounds upon which the appeal is taken. The surrogate shall immediately give notice, upon the determination by him as to the value of any estate which is taxable under this act, and of the tax to which it is liable, to all parties known to be interested therein.

*Notice of appeal* must be filed and the hearing must be limited to the errors noted in the appeal. *In re Davis*, 149 N. Y. 539, 548, 44 N. E. 185, affirming 91 Hun. 53.

S. 14 covers the salaries of surrogate's assistants in New York city.

S. 15 practically continues the provisions of N. Y. St. 1887, c. 713, s. 16, and adds thereto further provisions as to costs and expenses.

The affidavit to commence the proceedings to enforce the transfer tax under section 15 must contain a statement that there was probable cause for the proceeding, and an affidavit which simply says that the comptroller notified the district attorney and that the proceedings were commenced in good faith furnishes no evidence as to the facts and circumstances from which the court may form

an opinion as to the existence of probable cause. *In re McCarthy*, 5 Misc. Rep. 276, 25 N. Y. Suppl. 987.

S. 16 covers the form of receipt on payment of tax.

S. 17 covers the fees of the county treasurer and comptroller.

S. 18 provides for the books and forms to be furnished by the state comptroller.

S. 19 provides for the reports of the surrogate and county clerk.

S. 20 provides for the reports of the county treasurer and comptroller of the city of New York.

S. 21 covers application of taxes.

**S. 22. Definitions.** The words "estate" and "property" as used in this act shall be taken to mean the property or interest therein of the testator, intestate, grantor, bargainor or vendor, passing or transferred to those not herein specifically exempted from the provisions of this act and not as the property or interest therein passing or transferred to individual legatees, devisees, heirs, next-of kin, grantees, donees or vendees, and shall include all property or interest therein, whether situated within or without this state, over which this state has any jurisdiction for the purposes of taxation. The word "transfer" as used in this act shall be taken to include the passing of property or any interest therein in possession or enjoyment, present or future, by inheritance, descent, devise, bequest, grant, deed, bargain, sale or gift in the manner herein prescribed. The words "county treasurer," "comptroller" and "district attorney" as used in this act shall be taken to mean the treasurer, comptroller or district attorney of the county of the surrogate having jurisdiction as provided in section ten of this act.

### **"Over which this State has Any Jurisdiction for the Purposes of Taxation." — United States Bonds.**

The court holds that N. Y. St. 1892 did not tax United States bonds physically present in the state belonging to a non-resident. Although the state may have the power to impose a succession tax upon United States bonds, it has not yet done so; the phrase "property over which this state has any jurisdiction for the purposes of taxation" refers to the jurisdiction actually exercised through contemporary statutes rather than to the entire jurisdiction actually possessed by the state. *In re Whiting*, 150 N. Y. 27, 31, 44 N. E. 715, 34 L. R. A. 232, 55 Am. St. Rep. 640, modifying 2 N. Y. App. Div. 590, 38 N. Y. Suppl. 131. To the same effect is *In re Coogan*, 27 Misc. Rep. 563, 59 N. Y. Suppl. 111.

The court follows *In re Whiting*, 150 N. Y. 27, and refers to *Wallace v. Myers*, 38 Fed. 184, which was governed by the act of 1887, c. 713. The court remarks, however, that the statute of 1892 contains a new provision, section 22, not found in the prior acts,

which is a limitation on the taxing power, and that therefore United States bonds are not subject to tax.

The court affirms the power of the state under the inheritance tax laws to ascertain the value of the property for the purpose of fixing a tax to include the value of federal securities owned by the decedent. *In re Sherman*, 153 N. Y. 1, 4, 46 N. E. 1032, affirming 15 N. Y. App. Div. 628.

S. 23 names laws repealed, as follows:—

Laws of 1885, c. 483.	Laws of 1889, c. 479.
" " 1887, c. 713.	" " 1891, c. 215.
" " 1889, c. 307.	

S. 24. **Saving clause.** The repeal of a law or any part of it specified in the annexed schedule shall not affect or impair any act done, or right accruing, accrued or acquired, or liability, penalty, forfeiture or punishment incurred prior to May first, eighteen hundred and ninety-two, under or by virtue of any law so repealed, but the same may be asserted, enforced, prosecuted or inflicted as fully and to the same extent as if such law had not been repealed; and all actions and proceedings, civil or criminal, commenced under or by virtue of the law so repealed and pending on April thirtieth, eighteen hundred and ninety-two, may be prosecuted and defended to final effect in the same manner as they might under the laws then existing, unless it shall be otherwise specially provided by law.

The decedent died in November, 1890, and contest arose over the probate of the will, which was decided in March, 1891. The question arose whether interest on the amount of the tax due should be charged from the date of the death of the decedent or from a date eighteen months subsequent thereto. N. Y. St. 1892, c. 399, s. 4, does not apply to this case, as when the decedent died the law of 1887 applied, and under its provisions the executors would have a right to ask that the interest charged against them for delayed payment of the tax should be six per cent from eighteen months after the death of the decedent.

The repealing act of 1892 altered this provision, but at the same time saved the right which in the meaning of the statute had either accrued or was accruing at the time of its passage. This provision of the fifth section of the act of 1887 may well be called a "right" within the meaning of the act of 1892. It was something which gave to the parties the absolute right to have the interest charged at a certain percentage and from a certain date, upon the fact appearing which the statute provided for; and the saving feature of the repealing act of the statute of 1892 applies to it. *In re Fayerweather*, 143 N. Y. 114, 38 N. E. 278.

**S. 25. Construction.** The provisions of this act, so far as they are substantially the same as those of laws existing on April thirtieth, eighteen hundred and ninety-two, shall be construed as a continuation of such laws, modified or amended according to the language employed in this act, and not as new enactments. References in laws not repealed to provisions of laws incorporated into this act and repealed, shall be construed as applying to the provisions so incorporated. Nothing in this act shall be construed to amend or repeal any provision of the Criminal or Penal Code.

### AMENDMENTS TO THE ACT OF 1892.

N. Y. St. 1893, c. 199, approved March 24, 1893, provides for an assistant for the collection of inheritance taxes in the county of Kings, and repeals N. Y. St. 1892, c. 443.

N. Y. St. 1893, c. 704, approved May 13, 1893, amends N. Y. St. 1892, c. 399, s. 17, as to the fees of the county treasurer and comptroller.

N. Y. St. 1894, c. 767, approved May 24, 1894, amends N. Y. St. 1892, c. 399, s. 14, as to surrogate's and district attorney's assistant in New York city.

N. Y. St. 1895, c. 191, approved March 30, 1895, amends N. Y. St. 1892, c. 399, s. 14, by providing an assistant to the district attorney in Erie county for the collection of the tax.

N. Y. St. 1895, c. 378, approved April 23, 1895, amends N. Y. St. 1892, c. 399, s. 15, by adding a provision authorizing the state comptroller and a justice of the supreme court to compromise and settle the amount of the tax in any case where controversies have arisen or may arise as to the relationship of the beneficiaries to the former owner.

N. Y. St. 1895, c. 515, approved May 2, 1895, amends N. Y. St. 1892, c. 399, s. 14, as to surrogate's and district attorney's assistants in New York city and the county of Erie.

N. Y. St. 1895, c. 556, approved May 8, 1895, amends N. Y. St. 1892, c. 399, s. 13.

N. Y. St. 1895, c. 861, approved June 1, 1895, provides for a surrogate's assistant for the collection of inheritance taxes in Westchester county.

N. Y. St. 1896, c. 160, makes an appropriation for salaries and expenses in the collection of corporation and inheritance taxes.

N. Y. St. 1896, c. 952, became law May 28, 1896, amended N. Y. St. 1892, c. 399, s. 14.

### THE ACT OF 1896.

N. Y. St. 1896, c. 908. In effect May 27, 1896.

Sections 220 to 242 of this act provide a complete system of inheritance taxation.

#### Validity.

This act is constitutional. *In re Kimberly*, 27 N. Y. App. Div. 470, 50 N. Y. Suppl. 586.

**S. 220. Transfers taxable.** A tax shall be and is hereby imposed upon the transfer of any property, real or personal, of the value of five hundred dollars or



over, or of any interest therein or income therefrom, in trust or otherwise, to persons or corporations not exempt by law from taxation on real or personal property, in the following cases:

(1) When the transfer is by will or by the intestate laws of this state from any person dying seized or possessed of the property while a resident of the state.

(2) When the transfer is by will or intestate law, of property within the state, and the decedent was a non-resident of the state at the time of his death.

(3) When the transfer is of property made by a resident or by a non-resident, when such non-resident's property is within this state, by deed, grant, bargain, sale or gift made in contemplation of the death of the grantor, vendor or donor, or intended to take effect, in possession or enjoyment, at or after such death. Such tax shall also be imposed when any such person or corporation becomes beneficially entitled, in possession or expectancy to any property or the income thereof by any such transfer, whether made before or after the passage of this act. Such tax shall be at the rate of five per centum upon the clear market value of such property except as otherwise prescribed in the next section.

**S. 221. Exemptions.** When the property or any beneficial interest therein passes by any such transfer to or for the use of any father, mother, husband, wife, child, brother, sister, wife or widow of a son or the husband of a daughter, or any child or children adopted as such in conformity with the laws of this state, of the decedent, grantor, donor or vendor or to any person to whom any such decedent, grantor, donor or vendor for not less than ten years prior to such transfer stood in the mutually acknowledged relation of a parent, or to any lineal descendant of such decedent, grantor, donor or vendor born in lawful wedlock, such transfer of property shall not be taxable under this act, unless it is personal property of the value of ten thousand dollars or more, in which case it shall be taxable under this act at the rate of one per centum upon the clear market value of such property. But any property heretofore or hereafter devised or bequeathed to any person who is a bishop or to any religious corporation shall be exempted from and not subject to the provisions of this act.

**S. 222. Lien of tax and payment thereof.** Every such tax shall be and remain a lien upon the property transferred until paid and the person to whom the property is so transferred, and the administrators, executors and trustees of every estate so transferred shall be personally liable for such tax until its payment. The tax shall be paid to the treasurer or comptroller of the county of the surrogate having jurisdiction as herein provided; and said treasurer or comptroller shall give, and every executor, administrator or trustee shall take, duplicate receipts from him of such payment, one of which he shall immediately send to the comptroller of the state, whose duty it shall be to charge the treasurer or comptroller so receiving the tax with the amount thereof and to seal said receipt with the seal of his office and countersign the same and return it to the executor, administrator or trustee, whereupon it shall be a proper voucher in the settlement of his accounts; but no executor, administrator or trustee shall be entitled to a final accounting of an estate in settlement of which a tax is due under the provisions of this act unless he shall produce a receipt so sealed and countersigned by the comptroller or a copy thereof certified by him, or unless a bond shall have been filed as prescribed by section two hundred and twenty-six of this chapter. All taxes imposed by this article shall be due and payable at the time of the transfer; provided, how-

ever, that taxes upon the transfer of any estate, property or interest therein limited, conditioned, dependent or determinable upon the happening of any contingency or future event by reason of which the fair market value thereof can not be ascertained at the time of the transfer as herein provided shall accrue and become due and payable when the persons or corporations beneficially entitled thereto shall come into actual possession or enjoyment thereof.

**S. 223. Discount, interest and penalty.** If such tax is paid within six months from the accruing thereof, a discount of five per centum shall be allowed and deducted therefrom. If such tax is not paid within eighteen months from the accruing thereof, interest shall be charged and collected thereon at the rate of ten per centum per annum from the time the tax accrued; unless by reasons of claims made upon the estate, necessary litigation or other unavoidable cause of delay, such tax can not be determined and paid as herein provided, in which case interest at the rate of six per centum per annum shall be charged upon such tax from the accrual thereof until the cause of such delay is removed, after which ten per centum shall be charged. In all cases when a bond shall be given under the provisions of section two hundred and twenty-six of this chapter, interest shall be charged at the rate of six per centum from the accrual of the tax until the date of payment thereof.

Ss. 224-242 cover the assessment and collection of the tax.

**S. 230. Appointment of appraisers.** The surrogate, upon the application of any interested party, including county treasurers, or the comptroller of New York city, or upon his own motion, shall, as often as and whenever occasion may require, appoint a competent person as appraiser, to fix the fair market value, at the time of the transfer thereof of property of persons whose estates shall be subject to the payment of any tax imposed by this article. If the property upon the transfer of which a tax is imposed shall be an estate, income or interest for a term of years, or for life, or determinable upon any future or contingent estate, or shall be a remainder or reversion or other expectancy, real or personal, the entire property or fund by which such estate, income or interest is supported, or of which it is a part, shall be appraised immediately after such transfer, or as soon thereafter as may be practicable, at the fair and clear market value thereof at that time; provided, however, that when such estate, income or interest shall be of such a nature that its fair and clear market value can not be ascertained at such time, it shall be appraised in like manner at the time when such value first became ascertainable. The value of every future or contingent or limited estate, income, interest or annuity dependent upon any life or lives in being shall be determined by the rule, method and standard of mortality and value employed by the superintendent of insurance in ascertaining the value of policies of life insurance and annuities for the determination of liabilities of life insurance companies; except that the rate of interest for computing the present value of all future and contingent interests or estates shall be five per centum per annum. Whenever an estate for life or for years can be divested by the act or omission of the legatee or devisee, it shall be taxed as if there were no possibility of such limitation.

### **Contingent Interests.**

Under the statute of 1896, contingent or defeasible interests should not be appraised until the death of the life tenant and then

should be appraised at their full value when the persons entitle come into the beneficial enjoyment thereof. *In re Connolly*, 38 Misc. Rep. 533, 77 N. Y. Supl. 1113.

Where the testator died in 1897, the law in existence at his death governs the valuation of a contingent interest; and therefore the value of the contingent estate on coming into possession must be assessed without deduction of the value of the life estate. *In re Goelet*, 78 N. Y. Supl. 47.

### THE ACT OF 1897.

N. Y. St. 1897, c. 284, s. 220, added to N. Y. St. 1896, c. 908, s. 220, by inserting the following provisions:—

(4) (Such tax shall be imposed) When any such person or corporation becomes beneficially entitled, in possession or expectancy, to any property or the income thereof by any such transfer, whether made before or after the passage of this act.

(5) Whenever any person or corporation shall exercise a power of appointment derived from any disposition of property made either before or after the passage of this act, such appointment when made shall be deemed a transfer taxable under the provisions of this act in the same manner as though the property to which such appointment relates belonged absolutely to the donee of such power and had been bequeathed or devised by such donee by will; and whenever any person or corporation possessing such a power of appointment so derived shall omit or fail to exercise the same within the time provided therefor, in whole or in part, a transfer taxable under the provisions of this act shall be deemed to take place to the extent of such omissions or failure, in the same manner as though the persons or corporations thereby becoming entitled to the possession or enjoyment of the property to which such power related had succeeded thereto by a will of the donee of the power failing to exercise such power, taking effect at the time of such omission or failure.

(6) The tax imposed thereby shall be at the rate of five per centum upon the clear market value of such property, except as otherwise prescribed in the next section.

### **Appraisal of Remainder Interests at Death not Binding on State.**

Where in 1898 the life estate and the remainders were appraised, although no tax was laid on the remainder interests as it could not then be definitely ascertained to whom such remainders would ultimately descend, the court holds that the determination of the value of remainder interests was not binding upon the remaindermen, neither was it binding on the state. Therefore, when the question came on the death of the life tenant on the tax to be paid by the remaindermen, the state was not bound by the appraisal formerly made. *In re Naylor*, 189 N. Y. 556, 82 N. E. 1129, affirming 120 N. Y. App. Div. 738, 105 N. Y. Supl. 667.

### Powers of Appointment.

The New York statute of 1885 did not create any contract right that a person dying while that statute was in force might dispose of his estate without any further tax except as then in existence. Therefore the statute of 1897 could tax powers of appointment which were not taxable under the statute of 1885. *In re Vanderbilt*, 163 N. Y. 597, 57 N. E. 1127, 50 N. Y. App. Div. 246, 63 N. Y. Suppl. 1079.

The tax imposed by the New York statute of 1897 upon transfers made under a power of appointment is a tax on the right of succession and not on property; and therefore no exemption can arise from the fact that the funds are invested in state and municipal bonds. *In re Dows*, 167 N. Y. 227, 60 N. E. 439, 52 L. R. A. 433, 88 Am. St. Rep. 508, affirming 60 N. Y. App. Div. 630 (affirmed *sub nomine*, *Orr v. Gilman*, 183 U. S. 278, 22 S. Ct. 213, 46 L. Ed. 196).

It was claimed that the New York statute of 1897 imposing a tax upon transfers made under the power of appointment was a tax on property and not on the right of succession; and as a portion of the fund was invested in state and city bonds exempt from taxation, such exemption formed part of the contract under which these securities were purchased, and the tax imposed was in violation of the federal constitution forbidding the states to pass laws impairing the obligation of contracts.

The court holds that this tax does not impair the obligation of the contract within the meaning of the federal constitution. *Orr v. Gilman* 183 U. S. 278, 22 S. Ct. 213, 46 L. Ed. 196, affirming *In re Dow*, 167 N. Y. 227, 60 N. E. 439, 52 L. R. A. 433, 88 Am. St. Rep. 508. [See, further, notes to the present act, *post*, p. 884.]

N. Y. St. 1897, c. 284, amended section 222 of N. Y. St. 1896 by providing that taxes limited or determinable upon a contingency or future event shall accrue and become due and payable when the persons beneficially entitled shall come into actual possession or enjoyment thereof.

N. Y. St. 1897, c. 284, s. 4, amends N. Y. St. 1896, s. 225.

N. Y. St. 1897, c. 284, s. 5, amends N. Y. St. 1896, s. 226.

N. Y. St. 1897, c. 284, s. 6, amends N. Y. St. 1896, s. 230.

N. Y. St. 1897, c. 284, s. 7, amends N. Y. St. 1896, s. 232.

### AMENDMENTS TO THE ACT OF 1896.

N. Y. St. 1896, c. 953, provided for a transfer tax clerk in the county of Onondaga.

N. Y. St. 1897, c. 375, approved April 29, 1897, provided for an additional transfer tax clerk in the county of Oneida.

N. Y. St. 1898, c. 88, approved March 21, 1898, amended N. Y. St. 1896, c. 908, a. X, s. 221, by limiting exception as to any person to whom the decedent or grantor stood in the relation of a parent "to any child" . . . "provided, however, such relationship began at or before the child's fifteenth birthday and was continuous for ten years thereafter."

N. Y. St. 1898, c. 88, amended N. Y. St. 1896, c. 908, a. X, s. 242, by adding to the definition of the word "estate" and by striking out the words "over which this state has any jurisdiction for the purposes of taxation."

N. Y. St. 1898, c. 289, approved April 19, 1898, amended N. Y. St. 1896, c. 908, s. 233, by raising the salary of the assistant in the county of Erie.

N. Y. St. 1898, c. 289, amended N. Y. St. 1896, c. 908, s. 237, as to the payment of the percentage of the money collected to the county where collected.

N. Y. St. 1899, c. 76, approved March 14, 1899, amends N. Y. St. 1896, c. 908, s. 230, by giving the state comptroller the power jointly with the county treasurers or the comptroller of New York city to appoint an appraiser. The section further provides that whenever a transfer of property is made upon which there is or may be a tax imposed, such property shall be appraised immediately.

No deduction shall be made in favor of persons or corporations presently entitled to the beneficial enjoyment of property on account of any contingent encumbrance or any contingency which may defeat or diminish the estate. But in case of a happening of such contingency a proper refund of the tax paid shall be made. When property is transferred subject to any charge determinable on the death of any person, the increase of benefit accruing on the determination of such charge is a transfer of property taxable under the statute, as though the person beneficially entitled had then acquired such increase of benefit. When property is transferred in trust or otherwise and the rights of transferees are dependent upon contingencies or conditions whereby they may be wholly or in part created, defeated, extended or abridged, a tax shall be imposed upon said transfer at the highest rate which on the happening of any of the contingencies or conditions could be possible, and such tax shall be due and payable forthwith out of the property transferred. But in case of a subsequent diminution the taxpayer shall be entitled to a refund. All estates upon remainder or reversion which vested prior to June 30, 1885, but which will not come in actual possession or enjoyment until after the passage of this act shall be appraised and taxed as soon as the person or corporation beneficially interested shall be entitled to the actual possession or enjoyment thereof.

### **Purpose of Amendment.**

The amendments of 1899, c. 76, and 1900, c. 658, were passed to supply what were deemed omissions in the transfer tax law as it then stood, as some of the courts had decided that the transfer tax on life estates was payable out of income and no tax could be imposed on contingent remainders. [*In re Johnson*, 6 Dem. 146, *In re Roosevelt*, 143 N. Y. 120.] *In re Tracy*, 179 N. Y. 501, 508, 72 N. E. 519, reversing 87 N. Y. App. Div. 215.

### **Nature and Validity of Tax.**

The transfer tax under this act of 1899 still remains a tax upon succession. Each trust estate created is to be separately appraised and the tax determined according to the percentage fixed by the statute for those who are contingently entitled to the estate, and when fixed the tax is forthwith payable out of the trust property. *In re Vanderbilt*, 172 N. Y. 69, 73, 64 N. E. 782, modifying 68 N. Y. App. Div. 27, 74 N. Y. Suppl. 450. *In re Brez*, 172 N. Y. 609, 64 N. E. 958.

This is a tax on the succession of property and not a direct tax. If this act were a direct tax upon property it is clearly unconstitutional, as it does not apportion the burden equally among the owners of estates sought to be taxed. This is evidence that the intention of the legislature was not to exercise its power of direct taxation. *In re Pell*, 171 N. Y. 48, 60, 63 N. E. 789, 57 L. R. A. 540, 89 Am. St. Rep. 791, reversing 60 N. Y. App. Div. 286, 70 N. Y. Suppl. 196.

### **Unconstitutional in so far as Retroactive.**

The testator died in 1863, leaving property to a life tenant who died December 20, 1899, at which time all the estates in remainder came into actual possession and enjoyment, although they vested in 1863 on the death of the testator. N. Y. St. 1899, c. 76, provided for a tax upon all estates in remainder or reversion which vested prior to June 30, 1885, but which will not come into actual possession or enjoyment until after the passage of the act. The court remarks that legislation which impairs the value of a vested estate is unconstitutional.

"In the case before us it is an undisputed fact that these remainders had vested in 1863, and the only contingency leading to their divesting was the death of a remainderman in the lifetime of the life tenant, in which event the children of the one so dying would be substituted. If these estates in remainder were vested prior to the enactment of the Transfer Tax Act there could be in no legal sense a transfer of the property at the time of possession and enjoyment. This being so, to impose a tax based on the succession would be to diminish the value of these vested estates, to impair the obligation of a contract, and take private property for public use without compensation." *Per Bartlett, J.*, in *In re Pell*, 171 N. Y. 48, 55, 63 N. E. 789, 57 L. R. A. 540, 89 Am. St. Rep. 791, reversing 60 N. Y. App. Div. 286, 70 N. Y. Suppl. 196.

### Effect of Amendment.

Under the statute of 1899 the transfer is the passing of the title of a valuable interest out of or from the estate of the decedent, though the transferee is not now ascertainable, and every such transfer is presently taxable, however obscure, contingent or nebulous the ultimate vesting of the transferred interest may be. Therefore remainders for certain survivors not now ascertainable are now taxable. *In re Le Brun*, 39 Misc. Rep. 516, 80 N. Y. Suppl. 486.

N. Y. St. 1899, c. 269, approved April 7, 1899, authorizes the appointment of a transfer tax clerk in the county of Ulster.

N. Y. St. 1899, c. 270, approved April 7, 1899, provides for the appointment of a transfer tax clerk in the county of Erie.

N. Y. St. 1899, c. 389, amends N. Y. St. 1896, c. 908, s. 234, by providing for a surrogate's transfer clerk in the county of Suffolk.

N. Y. St. 1899, c. 406, approved April 24, 1899, provides for the collection in the county of Queens of the transfer tax through an inheritance tax clerk.

N. Y. St. 1899, c. 672, approved May 25, 1899, amended N. Y. St. 1896, c. 908, s. 232, by inserting in that section a provision for the appointment of a special guardian to protect the rights of infants or incompetents interested in the matter of the inheritance tax.

N. Y. St. 1899, c. 737, approved May 26, 1899, amended N. Y. St. 1896, c. 908, s. 282.

"Article 13, s. 282. Limitation of time. The provisions of the code of civil procedure, relative to the limitation of time of enforcing a civil remedy, shall not apply to any proceeding or action taken to levy, appraise, assess, determine or enforce the collection of any tax or penalty prescribed by articles nine or ten of said chapter, and this act shall be construed as having been in effect as of date of the original enactment of the corporation and inheritance tax law, provided, however, that as to real estate in the hands of bona fide purchasers, the transfer tax shall be presumed to be paid and cease to be a lien as against such purchasers after the expiration of six years from the date of accrual. This act shall not affect any action or proceeding now pending."

N. Y. St. 1900, c. 379, approved April 11, 1900, authorized agreements of compromise of taxes not presently payable.

N. Y. St. 1900, c. 382, in effect April 11, 1900, amends article 10, c. 908 by adding a section, 243, to read as follows:

**Exemptions in article one not applicable.** The exemptions enumerated in section four of the tax law, of which this article is a part, shall not be construed as being applicable in any manner to the provisions of article ten hereof.

### Cooper Union.

A legacy given to the Cooper Union by a testator who died in 1901 is subject to the transfer tax, although the Cooper Union was free of tax under the law. The court relies upon *In re Huntington*, 168 N. Y. 399, 61 N. E. 643; *Cooper Union v. Gass*, 190

N. Y. 323, 83 N. E. 64, 123 Am. St. Rep. 549. *In re Kucielski*, 128 N. Y. Suppl. 768.

### **Educational.**

The statute of 1900, chapter 382, made a change in the law and under it a corporation organized exclusively for educational purposes is no longer exempt from the inheritance tax. *In re Crouse*, 34 Misc. 670, 70 N. Y. Suppl. 731.

### **Religious.**

The Episcopal Church Missionary Society for Seamen is a religious corporation although it has power to conduct a seamen's boarding house, where its main object is to provide floating or other churches for seamen at different points in New York City. *In re Prall*, 78 N. Y. App. Div. 301, 79 N. Y. Suppl. 971.

N. Y. St. 1900, c. 382, in effect April 11, 1900, amends N. Y. St. 1896, c. 908, s. 225, as to the refund of taxes erroneously paid.

N. Y. St. 1900, c. 658, approved April 25, 1900, amends N. Y. St. 1896, c. 908, s. 230, by placing the appointment of appraisers within the control of the state comptroller. The amendment further provides for the salaries of the appraisers.

N. Y. St. 1900, c. 658, s. 2, amends N. Y. St. 1896, c. 908, s. 231, by increasing the rate of compensation of the appraisers.

[See notes to the Act of 1899, c. 76, *ante*, p. 822.]

N. Y. St. 1900, c. 723, exempts the New York Society for the Suppression of Vice from the operation of the inheritance tax law.

N. Y. St. 1901, c. 173, added to N. Y. St. 1896, s. 222, the following language: "All taxes which, at the time the amendment of this section takes effect, have been assessed by an order of the surrogate, or which have accrued, in a county in which the office of appraiser is salaried, shall be paid to the state comptroller, as provided by this article."

N. Y. St. 1901, c. 173, s. 2, amended s. 224 of N. Y. St. 1896.

N. Y. St. 1901, c. 173, s. 3, amended s. 225 of N. Y. St. 1896.

N. Y. St. 1901, c. 173, s. 4, amended ss. 228 and 229 of N. Y. St. 1896.

N. Y. St. 1901, c. 173, s. 5, amended s. 230 of N. Y. St. 1896.

### **Effect on Contingent Interests.**

Under the amendment of 1899, statute of 1899, chapter 76, the intention of the legislature was made clear and certain to change from a future to a present taxation in all cases of future estates. By the amendment of 1901, c. 173, the language of the amendment of 1899 was retained, showing the general legislative intent remained the same. Certain language was inserted providing that in specified cases a future taxation was intended, as under the amendment



of 1897 this provision that "estates in expectancy . . . shall be appraised at their full undiminished value, etc.," was intended to apply only to those cases unprovided for by the statute of 1899 where the transfers had occurred prior to 1899 and there had, under the amendment of 1897, been no proceedings taken to impose the tax. As the amendment of 1899 omitted the provision as to future assessment contained in the amendment of 1897 these cases were covered by no provision of the statute and hence this one was inserted in the amendment of 1901 to provide therefor. The legislature did not intend to change the general policy of present instead of future assessments of the estates of this nature as clearly indicated in the amendment of 1899. *Miller v. Tracy*, 93 N. Y. App. Div. 27, 86 N. Y. Suppl. 1024.

### **Retrospective as to Appraisal.**

The testatrix died in 1891, and the appraisal was had then under the existing law of the interests of the beneficiaries, but the tax on the interests of certain contingent remainders was postponed, as it was not then known and could not then be ascertained to whom the shares would ultimately pass. In 1902 the legatee to whom the property was given when she became thirty years of age reached that age and application was made to fix the tax on her share.

The court holds that the language in the statute of 1901, chapter 173, section 5, "where the taxation thereof has been held in abeyance," clearly makes the section apply retroactively and that therefore the appraisal must take place not in accordance with the valuation of 1891, but that a new appraisal was necessary. *In re Hosack*, 39 Misc. Rep. 130, 78 N. Y. Suppl. 983.

N. Y. St. 1901, c. 173, "shall take effect April 1st, 1901."

N. Y. St. 1901, c. 173, s. 6, amended N. Y. St. 1896, by adding s. 230a, giving the tax officials authority to compromise the taxes on certain remainder or future interests.

N. Y. St. 1901, c. 173, s. 7, amends N. Y. St. 1896, s. 231, as to appraisal.

N. Y. St. 1901, c. 173, s. 8, amends N. Y. St. 1896, s. 232.

N. Y. St. 1901, c. 173, s. 9, amends N. Y. St. 1896, s. 233.

N. Y. St. 1901, c. 173, s. 10, amends N. Y. St. 1896, s. 234.

N. Y. St. 1901, c. 173, s. 11, amends N. Y. St. 1896, ss. 235 and 236.

N. Y. St. 1901, c. 173, s. 12, amends N. Y. St. 1896, s. 237.

N. Y. St. 1901, c. 173, s. 13, amends N. Y. St. 1896, ss. 239 and 240.

N. Y. St. 1901, c. 173, s. 14, amended N. Y. St. 1896, by inserting a new section, 240a, as to the report of the state comptroller and the payment of taxes.

N. Y. St. 1901, c. 173, s. 15, amends N. Y. St. 1896, s. 241.

N. Y. St. 1901, c. 173, s. 16, amends N. Y. St. 1896, s. 242, as amended by N. Y. St. 1898, c. 88.

N. Y. St. 1901, c. 288, approved April 5, 1901, applied to the appointment of salaried appraisers in various counties.

N. Y. St. 1901, c. 458, approved April 22, 1901, amends N. Y. St. 1896, c. 908, s. 221, by adding to the exempted classes the following: Corporations organized exclusively for bible or tract purposes, corporations or associations organized exclusively for the moral and mental improvement of men and women, or for charitable, benevolent, missionary, hospital, infirmary, educational, scientific, literary, library, patriotic, cemetery or historical purposes, or for the enforcement of laws relating to children or animals; unless any officer, member or employee of such corporations shall receive any pecuniary profit from the operations thereof other than reasonable compensation, or unless the corporation be a guise or pretence for making pecuniary profit or if it not be in good faith organized or conducted for such purposes.

N. Y. St. 1901, c. 493, approved April 23, 1901, further amended N. Y. St. 1896, c. 908, s. 230, by giving the comptroller of the state of New York the right to move for an appraisal.

N. Y. St. 1901, c. 609, in effect September 1, 1901, provides that the state of New York may be made a party defendant in any action brought affecting real estate upon which the state has a lien under the transfer tax act.

N. Y. St. 1902, c. 101, approved March 6, 1902, amends N. Y. St. 1896, c. 908, s. 228, by putting the collection of the tax and the right of inquiry in the hands of the state comptroller, and by making other changes in that section.

N. Y. St. 1902, c. 283, approved March 29, 1902, amends N. Y. St. 1896, c. 908, s. 234, as to surrogate's assistants and their salaries.

N. Y. St. 1902, c. 496, approved April 10, 1902, further amends N. Y. St. 1896, c. 908, s. 230, as to the appointment, salaries and duties of appraisers.

The statute of 1902, chapter 496, does not in express terms apply to a remainder which has vested prior to the passage of the act. *In re Meyer*, 83 N. Y. App. Div. 381, 82 N. Y. Suppl. 329, reversing 82 App. Div. 636; 81 S. 1135.

N. Y. St. 1903, c. 41, approved March 16, 1903, amended N. Y. St. 1896, c. 908, s. 221, by providing that real or personal property to lineals, husband and wife and brother and sister, shall be exempt from taxation up to ten thousand dollars whether real or personal property. If the property so transferred is of the value of ten thousand dollars or more it shall be taxable at the rate of one per cent upon the clear market value of such property.

### Constitutionality.

This act is constitutional. It was attacked for insufficiency of the certificate of the secretary of state which omitted to state that three-fifths of all the members of the legislature were present as required by law at its passage. *In re Weeks*, 185 N. Y. 541, 77

N. E. 1197, affirming 109 App. Div. 859, 96 N. Y. Suppl. 876. *Matter of Stickney*, 185 N. Y. 107, 77 N. E. 77, 993; affirming 110 N. Y. App. Div. 294, 97 N. Y. Suppl. 336; affirmed in *Stickney v. Kelsey*, 209 U. S. 419, 52 L. Ed. 863.

See *In re Fisher*, 96 N. Y. App. Div. 133, 89 N. Y. Suppl. 102, to the effect that the only effect of this amendment is that in estimating the value of the property passing, real estate as well as personal property is to be now included.

N. Y. St. 1904, c. 758, approved May 14, 1904, further amended N. Y. St. 1896, c. 908, s. 230, by raising the salary of the appraiser in the county of Albany.

N. Y. St. 1905, c. 368, approved May 4, 1905, amends all sections of N. Y. St. 1896.

[St. 1896, c. 908, s. 226, providing machinery for deferring payments until possession is actually taken was repealed by being omitted from St. 1905, c. 368. Cf. St. 1899, c. 76.]

N. Y. St. 1906, c. 111, approved March 28, 1906, amends N. Y. St. 1896, c. 908 as amended by N. Y. St. 1905, c. 368, s. 240a.

N. Y. St. 1906, c. 567, approved May 23, 1906, amends N. Y. St. 1896, c. 908, s. 229.

N. Y. St. 1906, c. 699, approved June 2, 1906, amends N. Y. St. 1896, c. 908, s. 234, as to the salary of a transfer tax assistant in Westchester county.

N. Y. St. 1907, c. 204, approved April 25, 1907, amends N. Y. St. 1896, c. 908, s. 221.

N. Y. St. 1907, c. 323, approved May 8, 1907, amends N. Y. St. 1896, c. 908, s. 225, as to the interest on refunds or taxes erroneously paid.

N. Y. St. 1907, c. 709, approved July 23, 1907, amends N. Y. St. 1896, c. 908, s. 229, as to expenses of appraisal in New York county.

N. Y. St. 1908, c. 310, approved May 18, 1908, amends N. Y. St. 1896, c. 908, ss. 220, 221, 227, 229, 232, 235 and 237.

N. Y. St. 1908, c. 312, approved May 18, 1908, amends N. Y. St. 1896, c. 908, s. 234.

N. Y. St. 1908, c. 321, approved May 19, 1908, amends N. Y. St. 1896, c. 908, s. 229.

N. Y. St. 1909, c. 62, is an act in relation to taxation constituting c. 60 of the consolidated laws.

N. Y. St. 1909, c. 596, approved May 29, 1909, provides that in construing the consolidated laws these laws shall be considered as having been enacted as of the various times when such provisions and sections first became laws by the earlier statutes, the purpose being to prescribe that the statutory laws shall be of the same force and effect as they were before the enactment of the consolidated laws,

N. Y. St. 1910, c. 70, approved April 5, 1910, amends N. Y. St. 1909, c. 62, s. 234, as to the salary of the transfer tax clerk in the county of Albany.

N. Y. St. 1910, c. 600, approved June 23, 1910, amends N. Y. St. 1909, c. 62, s. 221. The words "for religious ceremonies, observances or commemorative services of or for the deceased donor or," are new in the section. [See *Matter of Epping*, 63 Misc. 613, 118 N. Y. Suppl. 683.]

N. Y. St. 1910, c. 706, approved July 11, 1910, amended N. Y. St. 1909, c. 62, s. 220, by providing that a tax shall be imposed upon the transfer of any property of the value of more than one hundred dollars. The provision formerly was of "five hundred dollars or over."

N. Y. St. 1910, c. 706, approved July 11, 1910, amends N. Y. St. 1909, c. 62, s. 221, by cutting down the exemptions to lineals and to collaterals from ten thousand dollars to five hundred dollars. A graduated tax is also provided.

N. Y. St. 1910, c. 706, approved July 11, 1910, amends N. Y. St. 1909, c. 62, s. 229, by adding an additional appropriation for extra work in the comptroller's office at Albany.

N. Y. St. 1910, c. 706, approved July 11, 1910, amends N. Y. St. 1909, c. 62, s. 243.

## THE GRADUATED TAX ACT OF 1910.

This statute, the most drastic ever passed by any eastern state, raised such a storm of protest from bankers and other interests affected that it was promptly repealed by St. 1911, c. 732.

**N. Y. St. 1910, c. 706.** In effect July 11, 1910.

**S. 220. Taxable transfers.** A tax shall be and is hereby imposed upon the transfer of any property, real or personal, of the value of more than one hundred dollars or of any interest therein or income therefrom, in trust or otherwise, to persons or corporations not exempt by law from taxation on real or personal property, in the following cases:

(1) When the transfer is by will or by the intestate laws of this state from any person dying seized or possessed of the property while a resident of the state.

(2) When the transfer is by will or intestate law, of property within the state, and the decedent was a non-resident of the state at the time of his death.

(3) Whenever the property of a resident decedent or the property of a non-resident decedent within this state, transferred by will, is not specifically bequeathed or devised, such property shall, for the purposes of this article, be deemed to be transferred proportionately to, and divided *pro rata* among all the general legatees and devisees named in said decedent's will, including all transfers under a residuary clause of such will.

(4) When the transfer is of property made by a resident or by a non-resident when such non-resident's property is within this state, by deed, grant, bargain, sale or gift made in contemplation of the death of the grantor, vendor or donor, or intended to take effect in possession or enjoyment at or after such death.

(5) When any such person or corporation becomes beneficially entitled, in possession or expectancy, to any property or the income thereof by any such transfer, whether made before or after the passage of this chapter.

(6) Whenever any person or corporation shall exercise a power of appointment derived from any disposition of property made either before or after the passage of this chapter, such appointment when made shall be deemed a transfer taxable under the provisions of this chapter in the same manner as though the property to which such appointment relates belonged absolutely to the donee of such power and had been bequeathed or devised by such donee by will; and whenever any person or corporation possessing such a power of appointment so derived shall omit or fail to exercise the same within the time provided therefor, in whole or in part, a transfer taxable under the provisions of this chapter shall be deemed to take place to the extent of such omission or failure, in the same manner as though the persons or corporations thereby becoming entitled to the possession or enjoyment of the property to which such power related had succeeded thereto by a will of the donee of the power failing to exercise such power, taking effect at the time of such omission or failure.

(7) The tax imposed hereby shall be at the rate of five per centum upon the clear market value of such property, except as otherwise prescribed in the next section. (As amended by L. 1910, c. 706.)

**S. 221. Exceptions and limitations.** When property, real or personal, or any beneficial interest therein, of the value of not more than five hundred dollars passes by any such transfer to or for the use of any father, mother, husband, wife, child, brother, sister, wife or widow of a son or the husband of a daughter, or any child or children adopted as such in conformity with the laws of this state, of the decedent, grantor, donor, or vendor, or to any child to whom any such decedent, grantor, donor or vendor for not less than ten years prior to such transfer stood in the mutually acknowledged relation of a parent, provided, however, such relationship began at or before the child's fifteenth birthday and was continuous for said ten years thereafter, and provided also that, except in the case of a stepchild, the parents of such child shall have been deceased when such relationship commenced, or to any lineal descendant of such decedent, grantor, donor or vendor born in lawful wedlock, such transfer of property shall not be taxable under this article; if real or personal property, or any beneficial interest therein, so transferred is of the value of more than five hundred dollars, it shall be taxable under this article at the rate of one per centum upon the clear market value of such property except as herein provided. No such tax shall be assessed upon property, real or personal, or any beneficial interest therein so transferred to a father, mother, widow or minor child of the decedent, grantor, donor or vendor, if the amount so transferred to such father, mother, widow or minor child is the sum of five thousand dollars or less; but if the amount so transferred to a father, mother, widow or a minor child is over five thousand dollars the excess shall be taxable at the rate of one per centum upon the clear market value of such property as hereinbefore provided. The rates of taxation hereinbefore prescribed in this and the preceding section are hereby designated as "primary rates." Whenever any property, real or personal, or any beneficial interest therein which passes by any such transfer to or for the use of any person or corporation, shall exceed the amount of twenty-five thousand dollars over and above the exemptions hereinbefore provided the rate of taxation shall be as follows:

Upon all amounts in excess of the said twenty-five thousand dollars and up to and including the sum of one hundred thousand dollars, twice the primary rates;

Upon all amounts in excess of the said one hundred thousand dollars and up to and including the sum of five hundred thousand dollars, three times the primary rates;

Upon all amounts in excess of the said five hundred thousand dollars and up to and including the sum of one million dollars, four times the primary rates;

Upon all amounts in excess of the said one million dollars, five times the primary rates. But any property devised or bequeathed for religious ceremonies, observances or commemorative services of or for the deceased donor, or to any person who is a bishop or to any religious, educational, charitable, missionary, benevolent, hospital or infirmary corporation, including corporations organized exclusively for Bible or tract purposes, shall be exempted from and not subject to the provisions of this article. There shall also be exempted from and not subject to the provisions of this article personal property other than money or securities bequeathed to a corporation or association organized exclusively for the moral or mental improvement of men or women or for scientific, literary, library, patriotic, cemetery or historical purposes or for the enforcement of laws relating to children or animals or for two or more of such purposes and used exclusively for carrying out one or more of such purposes. But no such corporation or association shall be entitled to such exemption if any officer, member or employee thereof shall receive or may be lawfully entitled to receive any pecuniary profit from the operations thereof except reasonable compensation for services in effecting one or more of such purposes or as proper beneficiaries of its strictly charitable purposes; or if the organization thereof for any such avowed purpose be a guise or pretense for directly or indirectly making any other pecuniary profit for such corporation or association or for any of its members or employees or if it be not in good faith organized or conducted exclusively for one or more of such purposes. [As amended by L. 1910, chaps. 600 and 706.]

N. Y. St. 1896, s. 221, as amended by the statute of 1910, c. 706, provides for a graduated tax, and it was claimed that the secondary rates are to be calculated upon so much of the transfer as exceed the amounts taxable at a lower rate. The court considered that the words "property" and "interest" are by their context confined to the interest which passed to the individuals. On a grammatical construction of the statute in consideration of its language the court holds that the words "up to and including the sum of" relate to the excess over the amount subject to the previous rate of taxation, and should be read as if the words in question were "upon all amounts of legacy which shall be in excess of said \$25,000." The amounts of each class are reckoned beginning with the amount of the next lower class and not by considering the amount of the whole estate in question. *In re Jourdan*, 128 N. Y. Suppl. 728.

**S. 243. Definitions.** The words "estate" and "property," as used in this article, shall be taken to mean the property or interest therein passing or transferred to individual or corporate legatees, devisees, heirs, next-of-kin, grantees, donees or vendees and not the property or interest therein of the decedent, grantor,

donor or vendor passing or transferred and shall include all property or interest therein, whether situated within or without this state. The word "transfer," as used in this article, shall be taken to include the passing of property or any interest therein in possession or enjoyment, present or future, by inheritance, descent, devise, bequest, grant, deed, bargain, sale or gift, in the manner herein prescribed. The words "county treasurer" and "district attorney," as used in this article, shall be taken to mean the treasurer or the district attorney of the county of the surrogate having jurisdiction as provided in section two hundred and twenty-eight of this article. (Former s. 242, as amended by L. 1910, c. 706.)

### THE PRESENT ACT.

[N. Y. St. 1909, c. 62, as amended.]

#### In General.

##### History. — Nature.

"While the laws of all civilized states recognize in every citizen the absolute right to his own earnings, and to the enjoyment of his own property and the increase thereof, during his life, except so far as the state may require him to contribute his share for public expenses, the right to dispose of his property by will has always been considered purely a creature of statute and within legislative control. 'By the common law, as it stood in the reign of Henry II, a man's goods were to be divided into three equal parts; of which one went to his heirs or lineal descendants, another to his wife, and a third was at his own disposal; or if he died without a wife, he might then dispose of one moiety, and the other went to his children; and so, *e converso*, if he had no children, the wife was entitled to one moiety, and he might bequeath the other; but if he died without either wife or issue, the whole was at his own disposal.' II Bl. Com. 492. Prior to the Statute of Wills, enacted in the reign of Henry VIII, the right to a testamentary disposition of property did not extend to real estate at all, and as to personal estate was limited as above stated. Although these restrictions have long since been abolished in England, and never existed in this country, except in Louisiana, the right of a widow to her dower and to a share in the personal estate is ordinarily secured to her by statute.

"By the Code Napoleon, gifts of property, whether by acts *inter vivos* or by will, must not exceed one half the estate if the testator leave but one child; one third, if he leaves two children; one fourth, if he leaves three or more. If he have no children, but leaves ancestors, both in the paternal and maternal line, he may give away but one half of his property, and but three fourths if he have

ancestors in but one line. By the law of Italy, one half a testator's property must be distributed equally among all his children; the other half he may leave to his eldest son or to whomsoever he pleases. Similar restrictions upon the power of disposition by will are found in the codes of other continental countries, as well as in the state of Louisiana. Though the general consent of the most enlightened nations has from the earliest historical period recognized a natural right in children to inherit the property of their parents, we know of no legal principle to prevent the legislature from taking away or limiting the right of testamentary disposition or imposing such conditions upon its exercise as it may deem conducive to public good."

The New York inheritance tax is not a tax upon the property itself but upon its transmission by will or descent. *Per* Brown, J., in *United States v. Perkins*, 163 U. S. 625, 627, affirming *In re Merriam*, 141 N. Y. 479, 36 N. E. 505, in which the court cites the following cases: *Matter of Swift*, 137 N. Y. 77; *Matter of Hoffman*, 143 N. Y. 327; *Schoolfeld v. Lynchburg*, 78 Va. 366; *Strode v. Commonwealth*, 52 Pa. St. 181; *State v. Dalrymple*, 70 Md. 294, 299.

As to the history and purpose of the legislation, see discussion by Cullen, J., in *In re Hellman*, 174 N. Y. 254, 66 N. E. 809, 95 Am. St. Rep. 582, reported *post*, pp. 851, 852.

The New York transfer tax is one on the right of succession and not on property. *In re Vanderbilt*, 172 N. Y. 69, 73, 64 N. E. 782, modifying 68 N. Y. App. Div. 27, 74 N. Y. Suppl. 450.

In discussing the effect of the general tax law on the collateral inheritance act the court says: "Nearly sixty years intervened between the passage of the earlier and the later statute, and the latter was enacted under different conditions from the former. It proceeds upon a new theory of the right of the government to tax and establishes a new system of taxation. It taxes the right of succession to property, and measures the tax in the method specifically prescribed. All property having an appraisable value must be considered, whether it is such as might be taxed under the general law or not. Many kinds of property might be enumerated which are not assessable under the general law, but which are appraisable under the collateral inheritance act. The definition of the different kinds of property which the legislature has incorporated in the general tax law, for the purposes of that law, cannot be imported into the collateral inheritance tax law upon any sound principle of statutory construction. It is therefore immaterial whether life insurance policies can be valued and



assessed for taxation under the general law." *Per* Maynard, J., in *In re Knoedler*, 140 N. Y. 377, 380, 35 N. E. 601, affirming 68 Hun. 150.

### What Law Governs.

#### *Time.*

As to the statute governing powers, see notes to the act of 1897, *ante*, p. 821.

The law in force at the testator's death governs substantive rights and liabilities under the inheritance tax. *In re Sterling*, 9 Misc. Rep. 224, 30 N. Y. Suppl. 385. *In re Milne*, 76 Hun. 328, 27 N. Y. Suppl. 727 (penalties and interest). *In re Moore*, 90 Hun. 162, 35 N. Y. Suppl. 782.

The method of procedure in a proceeding for the ascertainment and the determination of an inheritance tax is controlled by the statute on the subject in force at the time of the institution of the proceeding although the tax itself and the rights of the parties are controlled by an earlier statute. *In re Sloane*, 154 N. Y. 109, 47 N. E. 978, 19 N. Y. App. Div. 411, 46 N. Y. Suppl. 264. *In re Davis*, 149 N. Y. 539, 545, 44 N. E. 185, affirming 91 Hun. 53.

A law passed after vested though future interests had fully accrued, attempting to tax such interests would be unconstitutional though these interests had not come into possession. *In re Craig*, 181 N. Y. 551, 74 N. E. 1116, affirming 97 N. Y. App. Div. 289, 89 N. Y. Suppl. 971. *In re Hitchins*, 43 Misc. 485, 89 N. Y. Suppl. 472.

A vested remainder of one dying before the transfer tax act went into effect is not subject to the tax, although the life tenant dies after the tax statute has been passed. *In re Backhouse*, 185 N. Y. 544, 77 N. E. 1181, affirming 110 N. Y. App. Div. 737, 96 N. Y. Suppl. 466.

Where the children of the testator took vested interests subject to open and let in after born children on the one hand, and on the other hand subject to be defeated by death without issue, it is obvious that a right of succession to the estates in remainder passed at once on the death of the testator; and where the testator died in 1876 these remainder interests were not subject to the inheritance tax.

The court distinguishes *In re Curtis*, 142 N. Y. 219, on the ground that that case did not decide, as claimed, that such remainder

interests were taxable when they became beneficial interests. It was claimed that the beneficial interests did not pass until the termination of the life estates. The court says that in one sense that is true, but says that a necessary delay in appraisal as provided for by the statute of 1892 is a very different matter from the provision that no beneficial right of succession passed at all until after the death of the life tenants. To include such cases would give the statute a retrospective operation and subject to taxation rights of succession which accrued before the statute came into existence. To say that no beneficial interest passed into hands where it was taxable is very different from saying that no beneficial interest passed at all. *In re Seaman*, 147 N. Y. 69, 41 N. E. 401, reversing 87 Hun. 619.

*Law at Date of Deed.*

The deceased executed a trust deed in 1875 transferring all his property to trustees in contemplation of his then pending marriage, by the terms of which the net income of all the property was made payable to the deceased for his life and at his death the principal was to be paid to his widow and the issue of the marriage. The deceased died in 1901. The marriage took place before 1885. The right as a property right to take the gifts when the time for possession and enjoyment of it arrived at the death had fully accrued on the marriage and the birth of the children free from any existing tax, hence subsequent legislation imposing such a tax must be considered unconstitutional. No reservation being made of the power of revocation it became operative and effective as a grant upon execution and delivery wholly irrespective of the time when possession was to be given and the estate conveyed. *In re Craig*, 181 N. Y. 551, 74 N. E. 1116, affirming 97 N. Y. App. Div. 289, 89 N. Y. Suppl. 971.

N. Y. St. 1887, c. 713, does not apply to render taxable property under an irrevocable deed executed by the decedent in 1882 transferring property to trustees to pay the income to the grantor for life and on her death then over to nephews and nieces. The grantor died in 1888 and the court holds that the transfer took place to the nephews and nieces on the execution of the deed and not at the death of the testator. At the decedent's death she owned none of the property in question as her title had been conveyed to others long before. *In re Hendricks*, 3 N. Y. Suppl. 281, 1 Con. Surr. 301.

*Domicile.*

The exercise by a non-resident of a power of appointment under the will of a resident is not subject to tax in New York. *In re Fearing*, 200 N. Y. 340, 93 N. E. 956, affirming 123 N. Y. Suppl. 396.

The rights of the parties are governed by the law of the place which formed testator's domicile at his death. So where the testator while a citizen of France married, and under French law his wife was entitled to one half of his property on his death, the court holds that where he afterwards becomes a citizen of New York and owns property there, one half his property is not exempt from taxation on the ground that it belongs to his wife under French law. *In re Majot*, 135 N. Y. App. Div. 400, 119 N. Y. Suppl. 888.

**Construction of Statute.**

Executors have a right to claim that they shall be clearly brought within the terms of the inheritance law before they shall be subjected to its burdens. It is a well established rule that a citizen cannot be subjected to special burdens without the clear warrant of the law. *In re Enston*, 113 N. Y. 174, 178, 21 N. E. 87, 3 L. R. A. 464, 22 N. Y. St. 569, reversing 46 Hun. 506, 19 Abb. N. Cas. 227, 10 N. Y. St. 380, 5 Dem. Surr. 93, 8 N. Y. St. 781.

Taxes imposed by the collateral inheritance tax are special and not general, and the rule is that special tax laws are to be construed strictly against the government and favorable to the tax payer; that a citizen cannot be subjected to special burdens without clear warrant of law. *In re Vassar*, 127 N. Y. 1, 12, 27 N. E. 394, reversing 58 Hun 378, 12 N. Y. Suppl. 203.

The statute should be strictly construed in favor of the citizen, since it assumes to impose a special burden upon particular property and persons and is not in any proper sense a general tax. But where a particular subject is within the scope of the first section and an exemption from taxation is claimed on the ground that the legislature has not provided proper machinery for accomplishing the legislative purpose in a particular instance, a liberal rather than a strict construction should be applied, and if by fair and reasonable construction of its provisions the purpose of the statute can be carried out, that interpretation ought to be given to effectuate the legislative intent. *In re Stewart*, 131 N. Y. 274, 282, 30 N. E. 184, 14 L. R. A. 836.

**Validity.**

See notes to the Acts of 1885, 1887 and 1892, *ante*, pp. 776, 792, 801.

***Classification by Relationship.***

The suggestion that the New York statute is unconstitutional as providing a different rate of taxation for different classes of relatives, even if tenable, could not render the statute void in entirety. *In re Keeney*, 194 N. Y. 281, 286, 87 N. E. 428, affirming 128 N. Y. App. Div. 893.

***Discrimination Among Life Estates.***

The objection was made that the New York statute was void as singling out for taxation transfers where a life estate is reserved to the grantor leaving all other transfers or conveyances exempt.

"We think that there are sufficient reasons to support the classification made by the statute; at least that the classification cannot be said to be devoid of reasonable ground on which to rest. Inheritance tax laws have been very generally adopted throughout the states of the Union. A substantial part of the revenue necessary to support their governments is now derived from that source. A not wholly unnatural desire exists among owners of property to avoid the imposition of inheritance taxes upon the estates they may leave, so that such estates may pass to the objects of their bounty unimpaired. It is a matter of common knowledge that for this purpose trusts or other conveyances are made whereby the grantor reserves to himself the beneficial enjoyment of his estate during life. Were it not for the provision of the statute which is challenged, it is clear that in many cases the estate on the death of the grantor would pass free from tax to the same persons who would take it had the grantor made a will or died intestate. It is true that an ingenious mind may devise other means of avoiding an inheritance tax, but the one commonly used is a transfer with reservation of a life estate. We think this fact justified the legislature in singling out this class of transfers as subject to a special tax." *Per Cullen, C. J.*, in *In re Keeney*, 194 N. Y. 281, 286, 87 N. E. 428, affirming 128 N. Y. App. Div. 893.

***Who May Object to Discrimination in Rate.***

Grantees in a deed subject to the lowest rate of taxation have no valid cause of complaint as to the constitutionality of the transfer tax because other grantees are subjected to a higher rate. That objection if tenable could be taken only by the grantees taxed at

the higher rate. *In re Keeney*, 194 N. Y. 281, 286, 87 N. E. 428, affirming 128 N. Y. App. Div. 893.

*Not Impair Contract.*

Where the law imposing a tax was in force before the deposit was made by a non-resident in the state of New York it did not impair the obligation of the contract, if a tax otherwise lawful ever can be said to have that effect. *Blackstone v. Miller*, 188 U. S. 189, 23 S. Ct. 277, 47 L. Ed. 439, affirming 171 N. Y. 682, 69 N. Y. App. Div. 127, quoting *Pinney v. Nelson*, 183 U. S. 144, 147.

**Evasion of Tax.**

Evasion of tax by marshaling assets, see p. 936.

Evasion of tax by joint ownership, see *ante*, p. 846.

Good faith the test in transfers, see p. 877.

Assignment of interests, see p. 840.

Exercise of power following direction in will, see p. 889.

Deed in trust for the use of the testator for life and on his death subject to appointment by his will, see p. 882.

Election to take under original will instead of under the exercise of a power of appointment, see p. 891.

Rate on assignment of legacy, see p. 905.

Where no next of kin appear, see p. 904.

Effect of leaving legal title to property in a non-resident trustee, see p. 856.

*Leaving Stock with Brokers.*

The decedent, a resident of Louisiana, had ordered the purchase through her stock brokers in New York of certain stock and the certificates were taken in the name of the brokers, but paid for by her, and the stock was transferred on the books of the corporation, which was a New York corporation, to the brokers, who thereupon endorsed their names upon the blank transfer printed upon the certificates so that the same could be transferred to the testatrix, and the certificates so endorsed were then delivered by the brokers to the testatrix. The court holds that although she did not have the legal title to the stock at the time of her death, she did have an equitable title which at any time she could have transferred into a legal title by simply presenting the certificates to the officers of the corporations, and that this was an interest in the property which passed by her will and which was

taxable. She was entitled at any time to become vested with the legal title and certainly this equitable title was something more than a mere chose in action. It was in effect a property interest in these domestic corporations. *In re Newcomb*, 172 N. Y. 608, 64 N. E. 1123, affirming 71 N. Y. App. Div. 606, 76 N. Y. Suppl. 222.

*Renunciation by Legatee.*

In one case the legatees renounced the legacy and the property bequeathed therefore went to the residuary legatees. The court therefore holds that the tax should be laid at the rate as if the legacy had been originally given to the residuary legatees. The tax is laid solely upon the transfer and not upon the property transferred, nor upon the estate of the legatee. If the legatee renounced a gift, refused to receive it, no tax can be collected with respect to him because there has been no transfer to him. His right to renounce the privilege of accepting the donation is not denied or forbidden by the statute, and on his effective renunciation the title or ownership of the property remains in the estate, to be disposed of under the terms of the will, and the succession is taxable in accordance with the nature of the ultimate devolution. *In re Wolfe*, 179 N. Y. 599, 72 N. E. 1152, affirming 89 N. Y. App. Div. 349.

The court affirms and distinguishes *In re Wolfe*, 89 N. Y. App. Div. 349, 179 N. Y. 599, as there was no transfer by will to the executors, and therefore no transfer tax could be imposed. *In re Cook*, 187 N. Y. 253, 79 N. E. 991, reversing 114 N. Y. App. Div. 718, 99 N. Y. Suppl. 1049.

*Property Disclaimed by Executor.*

A disclaimer by the executor of property claimed to be included in a gift *inter vivos* by the decedent does not deprive the surrogate of jurisdiction to appraise it. *In re Lansing*, 31 Misc. 148, 64 N. Y. Suppl. 1125.

*The investment of a trust fund in tax-exempt securities* does not avoid the tax which is on successions and not on property. *In re Dow*, 167 N. Y. 227, 230, 60 N. E. 439, 52 L. R. A. 433, 88 Am. St. Rep. 508, affirming 60 N. Y. App. Div. 630.

*Account Placed in Wife's Name.*

Where a partner in a firm invested the profits with the firm and transferred this account to his wife to protect his wife from

his creditors, on the death of the wife a transfer tax should be levied on the property, as his intention to protect his wife could be effectuated only in case it was her money. *In re Anthony*, 40 Misc. Rep. 497, 82 N. Y. Suppl. 789.

*Bequest Void.*

Where it appeared that the beneficiaries under a residuary clause conceded its invalidity as a perpetuity and abandoned all claim to the property to the heirs, who sold it and received the consideration therefor, and that it did not pass under the will, the surrogate had jurisdiction to find that the property did not pass under the will, and that no tax was assessable against the residuary beneficiaries named. *In re Ullman*, 137 N. Y. 403, 33 N. E. 480.

*Assignment by Legatee. — Payment by Executor out of his own Funds.*

Where one of the executors previous to the death of the testator had so invested the testator's property that it was worthless and then on his death destroyed his will, one of the legatees by threats of criminal prosecution obtained payment of her legacy from the executor, at the same time assigning the legacy and all her interest in the same to the executor. The legacy was paid with the individual property of the executor. The legacy was two thousand dollars and the total assets of the estate of the testator amounted to less than eight hundred dollars. The court holds that no transfer tax can be levied on this legacy, as the legatee never received any property from the estate, and has in fact assigned all her rights against the estate. *In re Weed*, 10 Misc. Rep. 628, 32, N. Y. Suppl. 777.

**S. 220.** [As amended by St. 1911, c. 732, in effect July 21, 1911.] **Taxable transfers.** A tax shall be and is hereby imposed upon the transfer of any tangible property within the state and of intangible property, or of any interest therein or income therefrom, in trust or otherwise, to persons or corporations in the following cases, subject to the exemptions and limitations hereinafter prescribed:

(1) When the transfer is by will or by the intestate laws of this state of any intangible property, or of tangible property within the state, from any person dying seized or possessed thereof while a resident of the state.

(2) When the transfer is by will or intestate law, of tangible property within the state, and the decedent was a non-resident of the state at the time of his death.

(3) Whenever the property of a resident decedent, or the property of a non-resident decedent within this state, transferred by will is not specifically bequeathed or devised, such property shall for the purposes of this article, be

deemed to be transferred proportionately to and divided *pro rata* among all the general legatees and devisees named in said decedent's will, including all transfers under a residuary clause of such will.

(4) When the transfer is of intangible property, or of tangible property within the state, made by a resident, or of tangible property within the state made by a non-resident, by deed, grant, bargain, sale or gift made in contemplation of the death of the grantor, vendor or donor or intended to take effect in possession or enjoyment at or after such death.

(5) When any such person or corporation becomes beneficially entitled, in possession or expectancy, to any property or the income thereof by any such transfer whether made before or after the passage of this chapter.

(6) Whenever any person or corporation shall exercise a power of appointment derived from any disposition of property made either before or after the passage of this chapter, such appointment when made shall be deemed a transfer taxable under the provisions of this chapter in the same manner as though the property to which such appointment relates belonged absolutely to the donee of such power and had been bequeathed or devised by such donee by will.

(7) The tax imposed hereby shall be upon the clear market value of such property, at the rates hereinafter prescribed.

[See notes to the Act of 1885, c. 483, s. 1; 1887, c. 713; 1891, c. 215; 1892, c. 169; 1892, c. 399, s. 1; 1896, c. 908, s. 220; 1897, c. 284, s. 2; 1905, c. 368; 1908, c. 310; 1909, c. 62, s. 220; 1910, c. 706; 1911, c. 732.

### Definitions.

The words "estate," "property," "tangible property," "intangible property," "transfer," "intestate laws of this state," are defined in section 243, *post*, p. 969.

### "Transfer." — *Direction to Pay Debt or Other Obligation.*

The testator by his will gave to H. all money which might become due and payable at his decease on account of his membership in a certain Masonic Aid Association. The testator had taken out this membership to secure an indebtedness to H. The court holds that while H. may be entitled to receive money by virtue of the will he does not get it as a gift, but as payment of a debt, and the words used accomplish no more than the usual general direction in wills to pay debts and funeral expenses. *In re Rogers*, 10 N. Y. Suppl. 22, 2 Con. Surr. 198.

A husband signed an agreement to pay an annuity through a trustee to the wife, and by his will he created a trust in his executors to continue the annuity in case she refused a gross sum allowed her in the will. The court holds that this direction as to the trust in the will is not taxable, as it is no transfer and confers no benefit upon the widow. It is simply a direction of the testator as to



the manner in which his estate shall be administered. *In re Daniell*, 40 Misc. Rep. 329, 81 N. Y. Suppl. 1033.

The testator gave a legacy to a doctor in view of his care and services during the testator's years of sickness "without asking any reward for services rendered, as he knew my means were somewhat limited." The court holds that the question is not whether there is a claim which the testator may honorably, but not legally appoint to pay, but whether the creditor has a claim to which there is no legal defence which he can enforce by legal proceedings. The court says that the physician by neglecting to make a claim as a creditor has waived any rights and must come in as a legatee only.

"By neglecting to present any account to the executor, or prove any claim against the estate, and having accepted the gratuity which the deceased provided for him in her will, it was the duty of the executor, on its payment to him, to deduct therefrom the tax which had been assessed by the surrogate. If he desired to escape the payment of the tax, or was dissatisfied with the amount of the legacy, he should have established his debt, if he had any, against the estate, and had it paid by the executor in the usual manner, and let the legacy to him go into the residuary assets.

"The times have been  
That, when the brains were out, the man would die,  
And there an end; but now they rise again,  
With twenty mortal murders on their crowns,  
And push us from our stools.

"So, in the settlement of estates, the legal skeletons of stale claims and outlawed demands stalk forth from their charnel houses and their graves, and seek to push from their stools the guests whom the testator has invited to the feast." *Per Kennedy, S.*, in *In re Doty*, 7 Misc. Rep. 193, 56 N. Y. St. 626, 27 N. Y. Suppl. 653, 656.

*Contract to Leave by Will.*

The testator died in 1901 leaving a will, and the inheritance tax was compromised by the executor. An action was brought relying on an ante-nuptial contract with the testator to leave by will certain property, which agreement the testator had failed to fulfill. The action ended by a judgment for the plaintiff, and the court ordered the executors to turn over to the plaintiff the property covered by the contract.

The court holds that this transfer is subject to the inheritance tax, as it was not a contract to convey, but a contract to make a will. Had the deceased performed his agreement and bequeathed the property the estate would have been subject to the tax. It does not affect the question of the liability of the estate to taxation that in consequence of the failure of the testator to carry out his promise the beneficiary was obliged to resort to a court for relief. The judgment of the court converts the devisees or heirs at law, as the case may require, into trustees for the beneficiary under the original agreement. Therefore the devolution of the property has in fact taken place under the will, and such devolution is subject to the transfer tax. *In re Kidd*, 188 N. Y. 274, 279, 80 N. E. 924, reversing 115 N. Y. App. Div. 205, 100 N. Y. Suppl. 917.

Where in 1899 the intestate entered into an ante-nuptial contract in writing, by the terms of which, in consideration of his marriage, he agreed to provide for his wife by his last will and testament in case she survived him, the court holds that her rights are in the nature of a debt, and therefore not subject to taxation under the transfer tax law. She takes under the contract and not by will. *In re Baker*, 178 N. Y. 575, 70 N. E. 1094, affirming 83 N. Y. App. Div. 530, 82 N. Y. Suppl. 390, 38 Misc. 151, 77 N. Y. Suppl. 170.

#### *Bequest for Consideration.*

The will of Jay Gould recited that, his son having conducted his business for many years with great ability, he had fixed the value of the son's services at five million dollars; and evidence was introduced that this legacy was by agreement in view of the son's services and was for compensation and no other purpose. The court holds, however, that the New York statute does not limit the tax to property "gratuitously given by will," but that the word "transfer" covers the gift by will, whatever the method may be, whether to pay a debt or to discharge a moral obligation, or to benefit a relative for whom the testator entertained a strong affection. *In re Gould*, 156 N. Y. 423, 428, 51 N. E. 287, modifying 19 N. Y. App. Div. 352.

On the other hand, where a bequest is made to the foreman of the testator of four thousand dollars on condition he should accept it in full of all claims, and it appeared that the amount of the legatee's claim for services was in excess of the sum bequeathed, the legacy is not a gift and is not subject to the inheritance tax. *In re Underhill*, 20 N. Y. Suppl. 134, 2 Con. Surr. 262.

*Ante-Nuptial Contract.*

An ante-nuptial contract entered into by which the testator agrees to leave certain property by will to his wife is not one "intended to take effect in possession or enjoyment" until after the death of the obligor. It is not subject to taxation under the transfer tax act unless it can be shown that the agreement was entered into in bad faith where the husband in fact died intestate. *In re Baker*, 178 N. Y. 575, 70 N. E. 1094, affirming 83 N. Y. App. Div. 530, 82 N. Y. Suppl. 390, 38 Misc. 151, 77 N. Y. Suppl. 170.

An ante-nuptial agreement by which the husband transferred certain stock to the wife, and the next day she transferred the same stock back to him as trustee to apply to the mutual use of the parties during their joint lives, is not a gift to the wife in contemplation of death.

The court holds that the two agreements are not contemporaneous. *In re Miller*, 77 N. Y. App. Div. 473, 78 N. Y. Suppl. 930, overruling 75 N. Y. Suppl. 929. See, however, *In re Kidd*, 188 N. Y. 274, 80 N. E. 924, reversing 115 N. Y. App. Div. 205, 100 N. Y. Suppl. 917, noted fully *ante*, p. 842.

*Money Advanced to Legatee.*

The testator left the remainder of his property to his wife for life and on her death among his six children, deducting from the share of two of his sons money advanced to them, and charging their shares with these sums.

The court holds that these sums lent in advance to the sons are not regarded as advancements, but that they are claims belonging to the estate, and hence they are subject to the inheritance tax. *In re Bartlett*, 4 Misc. Rep. 380, 25 N. Y. Suppl. 990.

**"OF ANY TANGIBLE PROPERTY WITHIN THE STATE AND OF INTANGIBLE PROPERTY."**

This language is entirely new and was inserted by the act of 1911.

**Insurance Policies which Testator had Assigned.**

Where two policies upon their face were payable to the estate of the decedent and at his death were found in his safe deposit vault, and attached to each policy was an assignment of it in consideration of love and affection to his wife, the comptroller contends

that under section 220 the tax is payable upon the transfer of those policies upon the theory that the transfer was first by death and second by an assignment to take effect in possession or enjoyment at the death of the decedent.

The court holds that as against the state the deceased was not possessed of the policies at the time of his death and that the widow did not obtain title to them through his will or by the laws of the state of New York. This is an absolute present assignment of the interests of the assignor in the policy; therefore, no transfer tax is assessable. *In re Parsons*, 117 N. Y. App. Div. 321, 102 N. Y. Suppl. 168, affirming 51 Misc. 370, 101 N. Y. Suppl. 430.

### **Stock Held as Collateral.**

Where stock is purchased by stock brokers for a customer with their own money and they hold the stock as collateral with other stock deposited with them, the customer is merely the pledgee of the stock, the brokers being the owners of the property subject to a right to redeem upon paying the entire amount of the debt, and therefore the stock should not be included in the transfer of the estate of the customer. A subsequent sale of the stock by the brokers for the satisfaction of their lien extinguishes whatever right or title the decedent had and demonstrates that instead of being the owner of the property the estate was indebted in a large sum to the brokers. *In re Havemeyer*, 32 Misc. Rep. 416, 66 N. Y. Suppl. 722.

The testator was a non-resident of New York and had a speculative stock account with brokers in the city of New York, and on the day of his death owed them large sums of money on stocks and bonds purchased by them for him with their own money.

The court holds that the deceased was under contract with the brokers to apply certain pledged securities to the payment of the debt and the executrix performed that contract. The executrix argued that having paid a portion of the debt with pledged non-taxable securities, which are not under the transfer tax law considered as "property" in this state, she has a right to treat such portion of the debt as still existing for the purpose of offsetting against it property otherwise taxable. But the court holds that the executrix cannot claim that the balance of the debt after applying taxable property pledged which has actually been paid with non-taxable securities pledged for that purpose should be carried as a debt to credit and offset against clearly taxable property. And

while for the purposes of taxation non-taxable property is not to be treated as taxable property, yet it was part of the estate of the deceased which passed to the executrix and she chose to cause its sale and application to the debt of the deceased; and therefore the balance of the taxable property in the state of New York consisting of real estate and personal property is subject to the tax. *In re Burden*, 47 Misc. 329, 95 N. Y. Suppl. 972.

### **Equitable Interests.**

A gift in contemplation of death was made by a father to a daughter and she died within a few days of his death before the certificates of stock had been actually transferred to her, before she had received any dividends. The stock passed under her will as her property, and so passing is a transfer under the transfer tax law of the state which must suffer a tax. *In re Borup*, 28 Misc. Rep. 474, 59 N. Y. Suppl. 1097.

### **Joint Deposit.**

The courts have sought so far as possible to ascertain the real ownership in a joint deposit and measure the tax accordingly. Hence a joint deposit in a savings bank made up of sums which were given by the decedent to his wife was not taxable. *In re Rosenberg*, 114 N. Y. Suppl. 726. A deposit made in a national bank in the joint names of the husband and wife was originally owned by the decedent. Where the amount of the deposit at the time the account was made joint was made up entirely of money belonging to the decedent and where the checks were drawn out for household expenses and made up by money of the wife, the court says that if the money belonged to the wife then it is not taxable and if it was a joint account with right of survivorship then the case is governed by the *Stebbins* case, 103 N. Y. Suppl. 563, and the money is not taxable in either event. *In re Graves*, 52 Misc. 433, 103 N. Y. Suppl. 571.

Where the husband and wife deposited money in a savings bank in their joint names, with account payable to either or survivor, the wife has an interest in the deposit to give her an equal right with him to withdraw it during their joint lives and vests her with the absolute title in case she survives him. The court holds that in this case it was not the intention of either party to divest himself of the control and use of this money so long as both lived, and that the accounts were entered so that either could draw money during their joint lives as a matter of convenience, and

upon the death of either the deposits would become the absolute property of the survivor.

The court holds that the husband did not surrender the absolute possession and dominion of the money in question during his lifetime, and that although there was intention on the part of the parties to evade the transfer tax law, yet as the transfer had not become absolute until the death of the depositor such parts of the different deposits as were not the money of the wife when deposited are taxable. *In re Kline*, 65 Misc. 446, 121 N. Y. Suppl. 1090.

An account was opened in a trust company in the following form in 1899: "H. H. Stebbins, Julia A. Stebbins, either or the survivor may draw." The money contributed originally belonged to the wife, Julia A. Stebbins, and her husband contributed his salary to the household expenses, while the wife contributed various sums for the same purpose. The court notes section 225 and holds that sections 220 and 242 do not provide for the taxation of joint deposits. The act of depositing money in the joint names of the husband and wife indicates an intent to invest the title of the money in the survivor, and the deposit being joint is in the nature of an agreement or contract between the husband and wife. It is not testamentary nor does it depend upon the intestacy or testacy of the decedent. In this case there is no suggestion that the joint deposit was made with intent to evade the transfer tax. The survivorship is a mere incident. *In re Stebbins*, 52 Misc. 438, 103 N. Y. Suppl. 563.

### **Not Limited to Property Subject to General Taxation.**

Property subject to the transfer tax is not confined to property subject to general taxation. *In re Knoedler*, 140 N. Y. 377, 35 N. E. 601, affirming 68 Hun 150 (insurance policy). *In re Hellman*, 174 N. Y. 254, 66 N. E. 809, 95 Am. St. Rep. 582, reversing 77 N. Y. App. Div. 355, 79 N. Y. Suppl. 201 (seat in stock exchange).

### **Real Estate.**

Taxes on real estate, see *post*, p. 954.

Lien on real estate for whole tax to life tenant and remainderman, see *post*, p. 918.

### ***Mortgaged Real Estate.***

Where real estate is devised subject to mortgage the interest or equity of the testator in the real estate only is to be considered

as devised and the executors have no right to deduct the amount of the mortgages from the value of the personal estate in settling the inheritance tax. *In re Sutton*, 3 N. Y. App. Div. 208, 38 N. Y. Suppl. 277, affirming 15 Misc. 659, 38 N. Y. Suppl. 102. *In re Kene*, 8 Misc. Rep. 102, 29 N. Y. Suppl. 1078.

*Direction to Pay Mortgages out of Personalty.*

Where the will leaves real and personal property and empowers the executor to pay certain mortgages on the real estate out of the personal property the fact that the executors do so does not reduce the amount of personal property liable to the tax. The court distinguishes *In re James*, 144 N. Y. 6, and says that the subsequent act of the executor had no greater effect to reduce the tax on the personalty than would the taking of the money by the beneficiary out of one pocket and putting it into the other. *In re Livingston*, 1 N. Y. App. Div. 568, 37 N. Y. Suppl. 463.

The testator at the date of his death owned equities in real estate subject to mortgages and directed by his will that these mortgages be paid out of his personal estate. The personalty should be appraised, as it was at the testator's death, less debts and mortgages payable. The court holds that the estate must be appraised in the condition in which it was at the death of the testator. *In re Offerman*, 25 N. Y. App. Div. 94, 48 N. Y. Suppl. 993, following *In re Sutton*, 3 N. Y. App. Div. 208, 38 N. Y. Suppl. 277, and *In re Livingston*, 1 N. Y. App. Div. 568, 37 N. Y. Suppl. 463.

Where the testator devised real estate and directed that the mortgage upon it should be paid by his executor, the amount so used should be treated as personalty subject to the transfer tax. *In re De Graaf*, 24 Misc. Rep. 147, 53 N. Y. Suppl. 591, 2 Gibbons 516, following *In re Offerman*, 25 N. Y. App. Div. 94, 48 N. Y. Suppl. 993.

*Co-Tenancy. — Allowance for Improvements.*

Where the decedent was a co-tenant of land on which other co-tenants had made improvements and where each co-tenant presumed and knew what the others were doing, and the improvements were made under such conditions that on partition the co-tenants would be entitled to allowance for the improvements, only the balance of the interest of the decedent should be taxed, notwithstanding the fact that no proceeding for contribution had been commenced, and notwithstanding the fact that it might be claimed that

no contribution would ever be asked. This does not justify the taxation of property that the decedent did not own which does not pass to the heirs-at-law as her property. *In re Wood*, 123 N. Y. Suppl. 574.

*Real Estate Outside the State.*

Under the statute of 1885 real estate situated in Rhode Island belonging to a resident of New York is not subject to taxation in New York. *Lorillard v. People*, 6 Dem. Surr. (N. Y.) 268.

*Perpetual Leases.*

Perpetual leases on real estate in Japan are real estate. *In re Vivanti*, 122 N. Y. Suppl. 954, reversing 63 Misc. 618, 118 N. Y. Suppl. 680.

*Joint Stock Association Owning Real Estate.*

The testator died in 1891 bequeathing shares in a joint stock association called "The New York Times" which owned personal property. The executors contended that as the association owned real estate the interest therein of the shareholder was realty also, and as it passed under his will in the direct line, was exempt, the statute taxing transfers of realty only when passing to collaterals or strangers. See N. Y. St. 1891, c. 215.

The court discusses the difference between joint stock associations and corporations and concludes that "the fact that a joint stock association is not in legal contemplation a corporation, and not liable to taxation under acts seeking to reach corporations, in no way militates against the position assumed by the comptroller in this case. It is competent for private individuals to create a joint stock association, issue shares of stock, and in that form dispose of property by last will and testament. The associates by contract have created the same situation as to shares of stock that a corporation secures by charter." *Per Bartlett, J.*, in *In re Jones*, 172 N. Y. 575, 65 N. E. 570, 60 L. R. A. 476, reversing 69 N. Y. App. Div. 237, 74 N. Y. Suppl. 702.

*On Annulment of Fraudulent Conveyance.*

The executor claimed that certain property had been given to one of the heirs under the will, and the heir also claimed the gift, and the surrogate in a proceeding to assess the tax failed to assess this property, on the theory that it had been given to the heir.



Subsequently, in a contest between the heirs, it was determined that this gift was fraudulent and void, and the court then decided that as it now appeared that the property was transferred by the will of the testator and not by gift, it became taxable under the statute. *In re Lansing*, 31 Misc. Rep. 148, 64 N. Y. Suppl. 1125.

### **Personalty.**

#### *Debt.*

A bequest of a debt to the debtor is property and subject to the inheritance tax. *In re Wood*, 40 Misc. Rep. 155, 81 N. Y. Suppl. 511.

Value of note signed by legatee and bequeathed to him by holder, see p. 932.

#### *Good Will.*

As to the appraisal of the good will, see *post*, p. 933.

The good will of a firm is taxable under the transfer tax. *In re Dun*, 40 Misc. Rep. 509, 82 N. Y. Suppl. 802. (See, however, *In re Dun*, 30 Misc. 616, 80 N. Y. Suppl. 657.) *In re Hellman*, 77 N. Y. App. Div. 255, 79 N. Y. Suppl. 201, which was, however, reversed in 174 N. Y. 254, 66 N. E. 809, 95 Am. St. Rep. 355, 79 N. Y. Suppl. 201.

Where a business was conducted by and carried on by an administratrix in the name of the decedent, the good will of the business is an asset in her hands and as such it is taxable. *In re Keahon*, 60 Misc. 508, 113 N. Y. Suppl. 926.

#### *Leasehold Interest.*

The interest of a lessee of real estate is personal property, subject to taxation under N. Y. St. 1896, c. 908, s. 221, although buildings erected by the tenant may be assessed to him as land under the tax law. *In re Althause*, 168 N. Y. 670, 61 N. E. 1127, affirming 63 N. Y. App. Div. 252, 71 N. Y. Suppl. 445.

#### *Partnership Profits.*

Profits permitted to remain on deposit with the partnership should be included among the taxable assets. *In re Probst*, 40 Misc. Rep. 431, 82 N. Y. Suppl. 396.

#### *Partner's Claim against Partnership.*

Where a partner makes a loan to a partnership this money, as regards the rest of the world, is capital and not a loan, and is

therefore subject to the transfer tax. *In re Probst*, 40 Misc. Rep. 431, 82 N. Y. Suppl. 396.

*Insurance.*

A life insurance policy on the life of the decedent held by him at the time of his death is property owned by him at his death, and so subject to appraisal for the purposes of taxation under the inheritance tax law. The argument was made that it was only property liable to taxation under the general tax law of the state which could be taxed under the act relating to taxable transfers, and that inasmuch as life insurance policies cannot be included in the valuation of the taxpayer's property under the general law they cannot be considered in assessing the tax under the collateral inheritance law. But the taxable transfer law has no reference or relation to the general law. While the object of both is to raise revenue for the support of the government they have nothing else in common. *In re Knoedler*, 140 N. Y. 377, 35 N. E. 601, affirming 68 Hun 150.

The testator was a member of the New York Produce Exchange, and was a subscriber of the gratuity fund of that body, which under its by-laws belonged to beneficiaries provided for on his death, and was not liable to the payment of debts or legacies. This money passed, not by virtue of will or of any administration, but by the contract of the testator with the Produce Exchange.

The distinction between the two classes of policies—the first class where the contract is made for the benefit of the insured and the proceeds pass to his personal representatives as part of his estate; and the second class where the contract is made for the benefit of others and the proceeds are transferred to them by the terms of the contract—was clearly laid down by the court. *In re Fay*, 25 Misc. Rep. 468, 55 N. Y. Suppl. 749.

*Seat in Stock Exchange.*

The court holds that a seat in the stock exchange is property and subject to tax within the meaning of the N. Y. St. 1896, c. 908, s. 242.

"In determining the construction to be given to the broad and comprehensive language of section 242, we must consider that the statute has a history plainly indicating the trend of legislative action, and that as to the transfer tax it is a literal reproduction of the then existing law. First enacted in 1885 (Chap. 483) the Inheritance Tax Law was limited to property passing to collateral

relatives. It was subjected to repeated amendments, the effect of which in nearly every instance was either to enlarge the class of persons subject to the tax or to extend its application to some species of property which the courts had held not to fall within its terms. The distinction between property justly subject to ordinary taxation and that liable to the imposition of the transfer tax was early appreciated. In *Matter of Knoedler* (140 N. Y. 377) a policy of life insurance payable to the estate of the deceased was held subject to the tax. In the opinion there rendered Judge Maynard said: "The argument is made that it is only property which is liable to taxation under the General Tax Law of the state which can be taxed under the act relating to taxable transfers, and that, inasmuch as life insurance policies cannot be included in the valuation of a taxpayer's property under the general law, they cannot be considered in assessing a tax upon the collateral inheritance. The main premise upon which this proposition rests is manifestly inadmissible. The Taxable Transfer Law has no reference or relation to the general law . . . it proceeds upon a new theory of the right of the government to tax and establishes a new system of taxation. It takes the right of succession to property and measures the tax in the method specifically prescribed. All property having an appraisal value must be considered, whether it is such as might be taxed under the general law or not. Many kinds of property might be enumerated which are not assessable under the general law, but which are appraisable under the collateral inheritance tax.' Such was the settled construction of the inheritance tax laws when the act of 1896 was passed. That act, as already said, was a revision of the existing law, and an attempt to bring into a single statute all existing legislation relative to taxation by the state. In *Henavie v. N. Y. C. & H. R. R. Co.* (154 N. Y. 278, 281) Judge Vann said: "The rule in the case of a revision of statutes is that where the law, as it previously stood, was settled either by adjudication or by frequent application of the statute without question, a mere change in the phraseology is not to be construed as a change in the law, unless the purpose of the legislature to work a change is clear and obvious.' Therefore, because section 242 prescribes that 'all property' shall be subject to the transfer tax and because the revision of the statute should not be held to work a change in the settled law unless the legislative intent to that effect is clearly manifest, we are of opinion that the seat held by the testator was subject to the tax imposed upon it."

*Per Cullen, J.*, in *In re Hellman*, 174 N. Y. 254, 257, 66 N. E. 809, 95 Am. St. Rep. 582, reversing 77 N. Y. App. Div. 355, 79 N. Y. Suppl. 201.

A seat in the stock exchange is a privilege of value subject to the inheritance tax. *In re Curtis*, 31 Misc. Rep. 83, 64 N. Y. Suppl. 574.

### Conversion.

#### *Conversion by Direction to Pay Mortgages out of Personality.*

The New York courts have consistently refused to follow the Pennsylvania rule but have maintained that the test of taxability is the actual condition of property at the testator's death unaffected by any direction in the will for sale or investment. *In re Mills*, reported *post*, p. 854, is not a modification but is an example of this rule.

#### *Direction to Sell Real Estate.*

The power of sale conferred on executors does not operate to transfer real estate into personal property for purposes of taxation as the doctrine of equitable conversion is not applicable to subject real estate to taxation. *In re Swift*, 137 N. Y. 77, 88, 32 N. E. 1096, 18 L. R. A. 709, 64 Hun. 639, 16 N. Y. Suppl. 193, 19 N. Y. Suppl. 292.

Where land is devised and the executor is directed absolutely to sell it the better rule is to assess the tax on the property transferred as the testator leaves it without regard to the operation or effect of equitable rules that apply only to the administration of the estate. *In re Sutton*, 3 N. Y. App. Div. 208, 38 N. Y. Suppl. 277, affirming 15 Misc. 659, 38 N. Y. Suppl. 102.

A decedent transferred real estate in trust giving a power of sale to the trustees. After the death of the grantor the trust property was condemned for park purposes and the proceeds invested in bonds and mortgages. Upon the death of the daughter without exercising the power given her by the trustee, the court holds that the trust estate descending to her issue is to be treated as personal property.

The courts have held that the doctrine of equitable conversion cannot be invoked for the purpose of subjecting property to taxation under the act. The converse of that proposition must be true and the doctrine should not be invoked for the purpose of exempting the property from taxation. It is only by applying this fiction

that the securities now constituting the trust fund can be regarded as realty. The better rule is to assess the tax on the property transferred as the decedent left it. It is unreasonable that an equitable rule should attach to such absolute property, giving to it a fictitious character different from the real nature, so as to affect the right of the estate to subject the same to taxation. *In re Bartow*, 30 Misc. Rep. 27, 62 N. Y. Suppl. 1000. A contrary result was reached in *In re Wheeler*, 1 Misc. Rep. 450, 22 N. Y. Suppl. 1075.

*Direction to Invest in Real Estate.*

Where the will directed a remainder to be paid to a certain New York church "ten thousand dollars towards the building of a new church" this bequest cannot be treated as real estate, but is personal property, and by no rule of equitable conversion can it become real estate until it has been invested in real estate as directed. It must therefore be treated as a legacy of money. *Sherrill v. Christ Church*, 121 N. Y. 701, 702, 25 N. E. 50, reversing *In re Van Kleeck*, 55 Hun. 472.

*Tax on Power of Appointment.*

Where a will directs a conversion of real estate into personal property the court holds that the actual form in which the property existed at the death of the testator determines its liability to a transfer tax. And this same rule applies to a tax on the execution of the power of appointment. As it is the execution of a power which subjects grantees under it to a transfer tax, it follows that the condition or form of the property at the time of such execution must control. *In re Dows*, 167 N. Y. 227, 232, 60 N. E. 439, 52 L. R. A. 433, 88 Am. St. Rep. 508, affirming 60 N. Y. App. Div. 630, affirmed *sub nomine*, *Orr v. Cilman*, 183 U. S. 278, 22 S. Ct. 213, 46 L. Ed. 176.

*Interest of Testator in Estate, the Property of which was Directed to be Sold.*

The testator directed a sale of his real property and his daughter took his share in the proceeds of the real estate. She died before any actual sale and conversion had taken place, leaving a will by which her interest in her father's estate passed to her husband. The court holds that by the direction under the will of the father the land became personal property and therefore there was no tax on the interest passing from the daughter to her husband. *In re*

Mills, 177 N. Y. 562, 69 N. E. 1127, affirming 86 N. Y. App. Div. 555, 84 N. Y. Suppl. 1135.

### **Domicile or Situs of Property.**

#### *Adjudication of Domicile in Different States.*

The fact that the California courts decided that a certain decedent was a resident of California and administered his estate and assessed a tax on that basis does not bar the New York courts. It is not *res judicata* as to them. *In re Cummings*, 142 N. Y. App. Div. 377, 127 N. Y. Suppl. 109, reversing 63 Misc. 621, 118 N. Y. Suppl. 684, citing *Tilt v. Kelsey*, 207 U. S. 43, 28 S. Ct. 1, 52 L. Ed. 95. The court distinguishes the case of *Tilt v. Kelsey* on the ground that the California probate was only binding on heirs or beneficiaries and not on claimants.

### **Constitutionality of Double Taxation.**

Where a law imposing a tax was in force before the deposit was made by a non-resident in New York, although this fact does not seem to be relied upon by the court, the tax may be levied by the state of New York, although the tax has already been paid on the same deposit by the state of Illinois where the testator was domiciled. The court holds that this does not violate the fourteenth amendment.

"The fact that two states, dealing each with its own law of succession, both of which the plaintiff in error has to invoke for her rights, have taxed the right which they respectively confer, gives no cause for complaint on constitutional grounds. The universal succession is taxed in one state, the singular succession is taxed in another. The plaintiff has to make out her right under both in order to get the money." *Per Holmes, J., in Blackstone v. Miller*, 188 U. S. 189, 207, 23 S. Ct. 277, 47 L. Ed. 439, affirming 171 N. Y. 682, 69 N. Y. App. Div. 127.

### **"Faith and Credit" to Judgment of Another State.**

Where Illinois had already laid a tax upon the interest of a citizen of Illinois in a deposit in a trust company in New York, it was claimed that for New York to attempt to assess the interest as within the jurisdiction of New York was not giving due faith and credit to the judgment in Illinois. The court replies that the tax does not deprive the plaintiff in error of any of the privileges and immunities of the citizens of New York. It is no such depri-

vation that if she had lived in New York the tax on the transfer of the deposit would have been part of the tax on the inheritance as a whole. *Blackstone v. Miller*, 188 U. S. 189, 23 S. Ct. 277, 47 L. Ed. 439, affirming 171 N. Y. 682, 69 N. Y. App. Div. 127.

*Legal Title in Trustee in Another State.*

The fact that certain trust property passing under a deed of trust was at the intestate's death in another state with the legal title in the trustee does not affect the liability of the transfer to taxation. The liability in this case accrued at the time of the transfer, no matter when imposed.

The deceased was a resident of this state at the time of the transfer and the property was in this state and the transfer was here made. The deed in question was the deed in trust reserving a life estate to the grantor. *In re Keeney*, 194 N. Y. 281, 287, 87 N. E. 428, affirming 128 N. Y. App. Div. 893.

*Personal Property of Resident.*

The personal property of a resident decedent situated whether within or without the state is subject to the tax imposed by the act. *In re Swift*, 137 N. Y. 77, 88, 32 N. E. 1096, 18 L. R. A. 709, 64 Hun. 639, 16 N. Y. Suppl. 193, 19 N. Y. Suppl. 292.

The intestate, a resident of New York, died in 1894, leaving personal property in Iowa. An administrator appointed by the Iowa court paid a brother of the intestate who lived in Iowa out of the Iowa property. The court holds that the property in question although in a foreign state was subject to the New York tax. The court remarks that whether or not the tax when so assessed can be collected is a question in no manner presented to the court. *In re Dingman*, 66 N. Y. App. Div. 228, 72 N. Y. Suppl. 694.

*Claim Against Estate of Non-resident.*

Where the personal estate of a resident of New York consisted entirely of her distributive share in the estate of a deceased sister who resided in Ohio, but no part of this estate had come into the possession of the testatrix prior to her death, but consisted of money sent directly from the trustee of the estate of the deceased sister to the executor of the New York testator for the purposes of distribution, that portion of the personal estate is not liable to taxation. *In re Thomas*, 3 Misc. Rep. 388, 24 N. Y. Suppl. 713.

**Property of Non-residents.**

Debts of non-resident exhausting his New York assets, see p. 938.

The statute of 1911 has upset the policy of the state as to the taxation of property of non-residents. The act was passed in response to the demands of bankers and business men who claimed that the act of 1910 was driving capital out of the state. In particular it appeared that over four hundred millions of dollars deposited in banks and trust companies had been withdrawn from the state and that the high rates had resulted in no increase in revenue.

The act of 1911 limits the tax to tangible property within the state and to intangible property of residents of the state. Tangible property is confined by the act to corporeal property such as real estate and goods, wares and merchandise, and does not include money, bank deposits, stock, bonds, notes, credits or evidences of an interest in property and evidences of debt.

These provisions closely follow the uniform inheritance law suggested by the International Tax Conference of 1910.

***Personal Estate in New York of Non-residents.***

The state has a right to tax personal estate of non-residents which exists in the state of New York. *In re Romaine*, 127 N. Y. 80, 86, 27 N. E. 759, 12 L. R. A. 401, affirming 58 Hun. 109; *In re Vinot*, 7 N. Y. Suppl. 517. This is now limited by St. 1911, c. 732, to tangible property of non-residents.

***New York Real Estate of a Non-resident.***

Real property in New York of a non-resident is subject to the inheritance tax. *In re Vinot*, 7 N. Y. Suppl. 517.

***Bonds.***

The cases cited below are not applicable to estates where the transfer occurred after July 21, 1911 under N. Y. St. 1911, c. 702, as bonds of non-residents are not under that act taxable in New York.

Where the testator, a resident of South Carolina, died in 1888, leaving an estate, part of which was invested in bonds of corporations outside of the state of New York, which were on deposit at the time of his death with a New York bank, neither under the act of 1887 any more than the original act of 1885 are such bonds



property left within this state subject to the payment of the tax. *In re Gibbes*, 176 N. Y. 565, 68 N. E. 1117, affirming 84 N. Y. App. Div. 510; 83 N. Y. Suppl. 53, reversing 83 N. Y. Suppl. 56.

The decedent died in 1905, a resident of Alabama. He was a stockholder in a certain foreign consolidated coal company. The decedent was the president of the consolidated company which executed a deed of trust to a New York trust company, conveying their property to secure a bond issue. The decedent as president of the consolidated company commenced to sign these bonds in Alabama, but they were never all signed by him before his death. The decedent was entitled to some of these bonds, but he never received any certificates from the New York trust company, or anyone else that he was entitled to them, although such a certificate was delivered to his executrix after his death. The direction of the vice-president of the consolidated company to the New York trust company to deliver to the decedent five hundred thousand of the bonds of the consolidated company, directing that such bonds be deposited with the trust company for safe keeping in his name, and the receipt therefor sent to the consolidated company at Alabama, cannot be considered as a legal disposition of the bonds which belonged to the coal company, so that they thereby became the property of the decedent. If the decedent received these bonds it would be as president of the coal company. This right to receive these bonds of the foreign corporation which were never executed and which the decedent, a non-resident, was entitled to receive because he was a stockholder of another foreign corporation, was not property within this state and was not subject to taxation. *In re Hillman*, 116 N. Y. App. Div. 186, 101 N. Y. Suppl. 640.

While deposits are taxable at the place of deposit (*In re Houdayer*, 150 N. Y. 37), irrespective of the place where the certificates of deposit may be kept (*In re Hewitt*, 181 N. Y. 547), bonds are considered by the New York courts at least, as following the owner's domicile. *In re Bronson*, 150 N. Y. 1; *In re Whiting*, 150 N. Y. 27; *In re Morgan*, 150 N. Y. 35. See *In re Schermerhorn*, 50 Misc. 233, 100 N. Y. Suppl. 480.

*Non-resident's Claim against Estate of Another.*

Under N. Y. St. 1911, c. 732, only tangible assets in New York of a non-resident are taxable in New York.

The testator died in 1891 leaving the residue to a non-resident. The residuary legatee died in 1892. The New York transfer tax

authorities fixed the amount of her estate subject to tax including the residuary legacy to the non-resident, and the tax was paid. The legacy to the non-resident was never paid to him nor was it in a condition to be paid, as he died while the testator's estate was unsettled. By his will he gave his estate to his widow.

This proceeding was brought under the statute of 1887 as amended by the statute of 1891, chapter 215.

The court notices the doctrine as to the *situs* of tangible personal property, but says that a mere chose in action has never yet been given the attribute of tangibility and this was all that the residuary legatee had at the time of his death. He had a right to claim the amount of money which his share of the residuary estate would result in and nothing more. He had no right in any particular piece of property or any particular sum of money. Until this residuary estate was ascertained he might not be even able to maintain an action for its recovery. The court holds, therefore, that no tax should have been laid upon this legacy as the statute was intended to cover only tangible property kept within this state by the decedent and that property which is transiently here, as upon the person or in the baggage of a man suddenly dying within this state, was never intended to be covered by the provisions of the act. *In re Phipps*, 143 N. Y. 641, 37 N. E. 823, affirming 77 Hun. 325, 28 N. Y. Suppl. 330.

The testator was a citizen of France and died before the payment to him of his share in his father's estate, the father being a resident of New York and his will being admitted to probate in this state. Subsequently distribution was had and the executor of the son appointed in New York received certain securities in satisfaction of his share of the father's estate. It was contended that at the time of the death of the son his interest in his father's estate was a mere chose in action, the *situs* of which was not this state but at the son's domicile in France, that hence that was not property within the state and subject to our inheritance laws.

The court holds that it cannot concede that a claim due a non-resident from a resident of this state is not property within this state subject to the imposition of the transfer tax. The court refuses to follow *In re Phipps*, 143 N. Y. 641, 77 Hun. 325, and says that that case has been overruled in effect by *In re Blackstone*, 171 N. Y. 682, affirmed in *Blackstone v. Miller*, 188 U. S. 189. Under the doctrine of the *Blackstone* case the interest of the son in his father's estate was subject to the inheritance tax imposed by the laws of

this state as it was a claim due a non-resident from a resident of this state. *In re Clinch*, 180 N. Y. 300, 73 N. E. 35, affirming 99 N. Y. App. Div. 298; 90 N. Y. Suppl. 923, 44 Misc. 190, 89 N. Y. Suppl. 802.

Where the husband and wife are both residents of New Jersey and the husband dies leaving in a safe deposit box in New York certain securities, and cash on deposit in a New York bank, and bequeathing by will all of his property to his wife, before the will was admitted to probate the wife died, leaving a last will and testament by which she left certain legacies. After the death of the wife the will of her husband was admitted to probate by a New Jersey court and later her will was also admitted to probate by this court. Subsequently the executor of the husband removed his securities to New Jersey and paid to the executor of the wife various sums of money in payment of her legacy. The court finds that although the property of the husband was actually in the state of New York at his death still the claim of the wife against this estate was never property within the state of New York, as the right that the wife had in her husband's estate was not a right to the particular personal property which he owned, but a right to the balance of the proceeds of his property after the payment of debts and expenses of administration. And that right at her death was solely a claim against his executor and was not, therefore, property within the state of New York at the death of the wife. *In re Lord*, 186 N. Y. 549, 79 N. E. 1110, affirming 111 N. Y. App. Div. 152, 97 N. Y. Suppl. 553.

The testator, a resident of New Jersey, died in 1892. By his will he gave all his estate to his wife. He also exercised a power of appointment of certain property held by trustees in favor of his wife and appointed his wife and nephew executors. Before this will was admitted to probate his wife died, a resident of New Jersey. The original testator owned no real property within the state of New York and as the statute at that time provided no means of assessing and collecting a tax upon a non-resident not owning real estate within the state the transfer of his property was not taxable.

After the will of the testator had been admitted to probate in New Jersey the surviving executor took the property of the testator which was within the state of New York to the state of New Jersey.

There are three funds involved: first, a trust fund created by a trust deed of 1873, of which the testator was life tenant with the

power of disposal by will. By his will he exercised this power in favor of his wife and by this exercise of the power the title vested in her and passed under her will. Second, a trust created by a will of a relative who died in 1880, the income to be paid to the testator for life with the power of appointment of the remainder. This he also exercised in favor of his wife and that property vested in her and passed under her will. Third, property bequeathed by the testator to his wife, which was subsequent to her death realized by his executor and the proceeds paid by him to the executors of the wife.

At the time of the death of the testator the property created under the first trust was held by the trustees who were residents of New York and the property was in New York. Upon the exercise of the power of appointment the title to that property vested absolutely in the wife, her title relating back to the deed and will creating the trust. The property constituting these trust funds that was in the state at the time of her death which was transferred by her last will was clearly taxable under the New York statute of 1885 as amended by the statutes of 1887 and 1891, c. 215. *In re Lord*, 186 N. Y. 549, 79 N. E. 1110, affirming 111 N. Y. App. Div. 152, 97 N. Y. Suppl. 553.

*Debt to Non-resident by Association with an Office in New York.*

The decedent resided in New Jersey and was president of a joint stock association and owned a majority of its stock. At the time of his death the association was indebted to the decedent on an open account; and the court holds that this account is not subject to tax in New York, although the association had an office in the city of New York. *In re Horn*, 39 Misc. Rep. 133, 78 N. Y. Suppl. 979.

*Deposit in Bank by Non-resident.*

The cases cited below are not applicable to transfers which took place after July 21, 1911, under N. Y. St. 1911, c. 732, which exempted the bank accounts of non-residents from the inheritance tax.

Bank account of non-resident in N. Y. is taxable. *In re Clark*, 92 N. Y. St. 650, 9 N. Y. Suppl. 444, 2 Con. Surr. 183.

"If the transfer of the deposit necessarily depends upon and involves the law of New York for its exercise, or, in other words, if the transfer is subject to the power of the state of New York, then New York may subject the transfer to a tax." *United States v.*

*Perkins*, 163 U. S. 625, 628, 629; *McCullough v. Maryland*, 4 Wheat. 316, 429. But it is plain that the transfer does depend upon the law of New York, not because of any theoretical speculation concerning the whereabouts of the debt, but because of the practical fact of its power over the person of the debtor. The principle has been recognized by this court with regard to garnishments of a domestic debtor of an absent defendant. *Chicago, Rock Island & Pacific Ry. Co. v. Sturm*, 174 U. S. 710. See *Wyman v. Halstead*, 109 U. S. 654. What gives the debt validity? Nothing but the fact that the law of the place where the debtor is will make him pay. It does not matter that the law would not need to be invoked in the particular case. Most of us do not commit crimes, yet we nevertheless are subject to the criminal law, and it affords one of the motives for our conduct. So again, what enables any other than the very creditor in proper person to collect the debt? The law of the same place. To test it, suppose that New York should turn back the current of legislation and extend to debts the rule still applied to slander that *actio personalis moritur cum persona*, and should provide that all debts hereafter contracted in New York and payable there should be extinguished by the death of either party. Leaving constitutional considerations on one side, it is plain that the right of the foreign creditor would be gone.

"Power over the person of the debtor confers jurisdiction, we repeat. And this being so we perceive no better reason for denying the right of New York to impose a succession tax on debts owed by its citizens than upon tangible chattels found within the state at the time of the death. The maxim *mobilia sequuntur personam* has no more truth in the one case than in the other. When logic and the policy of a state conflict with a fiction due to historical tradition, the fiction must give way.

"There is no conflict between our views and the point decided in the case reported under the name of *State Tax on Foreign Held Bonds*, 15 Wall. 300. The taxation in that case was on the interest on bonds held out of the state. Bonds and negotiable instruments are more than merely evidences of debt. The debt is inseparable from the paper which declares and constitutes it, by a tradition which comes down from more archaic conditions. *Bacon v. Hooker*, 177 Mass. 335, 337. Therefore, considering only the place of the property, it was held that bonds held out of the state could not be reached. The decision has been cut down to its pre-

cise point by later cases. *Savings & Loan Society v. Multnomah County*, 169 U. S. 421, 428; *New Orleans v. Stempel*, 175 U. S. 309, 319 320.

"In the case at bar the law imposing the tax was in force before the deposit was made, and did not impair the obligation of the contract, if a tax otherwise lawful ever can be said to have that effect. *Pinney v. Nelson*, 183 U. S. 144, 147. The fact that two states, dealing each with its own law of succession, both of which the plaintiff in error has to invoke for her rights, have taxed the right which they respectively confer, gives no cause for complaint on constitutional grounds. *Coe v. Errol*, 116 U. S. 517, 524; *Knowlton v. Moore*, 178 U. S. 41, 53. The universal succession is taxed in one state, the singular succession is taxed in another. The plaintiff has to make out her right under both in order to get the money. See *Adams v. Batchelder*, 173 Mass. 258." *Per* Holmes, J., in *Blackstone v. Miller*, 188 U. S. 189, affirming *In re Blackstone*, 171 N.Y. 682, 64 N.E. 1118, 69 N.Y. App. Div. 127, 74 N.Y. Suppl. 508.

#### *Special Deposit.*

The testator was a resident of Montana and died November 12, 1900, owning a debt against a resident of New York city. The testator had previously loaned money to a resident of New York who gave a check during the last illness of the testator to the testator's secretary in payment of the loan. The secretary deposited this in a New York bank in a special account to the credit of the testator.

The court holds that this account is subject to the New York transfer tax although it has also paid a tax in Montana. The court relies on the case *Blackstone v. Miller*, 188 U. S. 189. *In re Daly*, 182 N. Y. 524, 74 N. E. 1116, affirming 100 N. Y. App. Div. 373, 91 N. Y. Suppl. 858. (The opposite result would now be reached under N. Y. St. 1911, c. 732.)

#### *Deposit in Savings Bank.*

A resident of Pennsylvania died holding certain deposits in savings banks in New York state and also in the hands of her legal adviser here a certain sum of money, and also a bond for ten thousand dollars secured by a mortgage on real estate in the city of New York.

The court holds that as the money in the savings banks was under the protection of the laws of New York it is subject to tax in New York. *In re Burr*, 16 Misc. Rep. 89, 74 N. Y. St. 490, 38 N. Y. Suppl. 811.

*Deposit in Trust Company.*

The cases cited below are not applicable to transfers which took place after July 21, 1911, under N. Y. St. 1911, c. 732, which exempted deposits of non-residents from the inheritance tax.

Money, the proceeds of a sale of stock in an Illinois corporation owned by an Illinois corporation, deposited with a New York trust company in New York where the funds lay at the death of the testator, is subject to the New York transfer tax. The court relies on *In re Houdayer*, 150 N. Y. 37. *In re Blackstone*, 171 N. Y. 682, affirming 69 N. Y. App. Div. 127; 74 N. Y. Suppl. 508, reversing 72 N. Y. Suppl. 59, affirmed *Blackstone v. Miller*, 188 U. S. 189, 23 S. Ct. 277.

The testator, a citizen of Illinois, made a deposit in a trust company in New York and his estate paid the Illinois transfer tax. The supreme court, however, sustains the levy of a tax by the state of New York also.

"If the transfer of the deposit necessarily depends upon and involves the law of New York for its exercise, or in other words, if the transfer is subject to the power of the state of New York, then New York may subject the transfer to a tax. . . . But it is plain that the transfer does depend upon the law of New York, not because of any theoretical speculation concerning the whereabouts of the debt, but because of the practical fact of its power over the person of the debtor.

"What gives the debt validity? Nothing but the fact that the law of the place where the debtor is will make him pay. It does not matter that the law would not need to be invoked in the particular case. Most of us do not commit crimes, yet we nevertheless are subject to the criminal law, and it affords one of the motives for our conduct. So again, what enables any other than the very creditor in proper person to collect the debt? The law of the same place. To test it, suppose that New York should turn back the current of legislation and extend to debts the rule still applied to slander that *actio personalis moritur cum persona*, and should provide that all debts hereafter contracted in New York and payable there should be extinguished by the death of either party. Leaving constitutional considerations on one side, it is plain that the right of the foreign creditor would be gone.

"Power over the person of the debtor confers jurisdiction, we repeat. And this being so we perceive no better reason for denying the right of New York to impose a succession tax on debts

owed by its citizens than upon tangible chattels found within the state at the time of the death. The maxim *mobilia sequuntur personam* has no more truth in the one case than in the other. When logic and the policy of a state conflict with a fiction due to historical tradition, the fiction must give way." *Per* Holmes, J., in *Blackstone v. Miller*, 188 U. S. 189, 23 S. Ct. 277, 47 L. Ed. 439; affirming 171 N. Y. 682, 69 N. Y. App. Div. 127.

The court remarks that "no one doubts that succession to a tangible chattel may be taxed wherever the property is found and none the less that the law of the *situs* accepts its rules of succession from the law of the domicile, or that by the law of the domicile the chattel is part of a *universitas* and is taken into account again in the succession tax there." The court holds that there is no distinction for the purposes of taxation between the power to tax chattels of a non-resident within the state and his rights in a deposit in a trust company within the state. *Blackstone v. Miller*, 188 U. S. 189, 204, 23 S. Ct. 277, 47 L. Ed. 439; affirming 171 N. Y. 682, 69 N. Y. App. Div. 127.

Where a deposit is made in a trust company where it remains fourteen months while the owner is seeking new investment, a finding is justified that the property was not "*in transitu* in such a sense as to withdraw it from the power of the state." *Blackstone v. Miller*, 188 U. S. 189, 203, 23 S. Ct. 277, 47 L. Ed. 439; affirming 171 N. Y. 682, 69 N. Y. App. Div. 127.

Money deposited by a non-resident in a New York trust company is property within the state subject to the inheritance tax. "If he had deposited in specie, to be returned in specie, there can be no doubt that the money would be property in this state subject to taxation. But, instead, he did as business men generally do, deposited his money in the usual way, knowing that, not the same, but the equivalent, would be returned to him upon demand. While the relation of debtor and creditor technically existed, practically he had his money in the bank and could come and get it when he wanted it. It was an investment in this state subject to attachment by creditors. If not voluntarily repaid, he could compel payment through the courts of this state. The depository was a resident corporation, and the receiving and retaining of the money were corporate acts in this state. Its repayment would be a corporate act in this state. Every right springing from the deposit was created by the laws of this state. Every act out of which those rights arose was done in this state. In order to enforce



those rights, it was necessary for him to come into this state. Conceding that the deposit was a debt; conceding that it was intangible, still it was property in this state for all practical purposes, and in every reasonable sense within the meaning of the Transfer Tax Act. (*In re Romaine*, 127 N. Y. 80, 89.)

"While distribution of the fund belongs to the state where the decedent was domiciled, as such distribution cannot be made until his administrator has come into this state to get the fund, possibly, after resorting to the courts for aid in reducing it to possession, the fund has a *situs* here, because it is subject to our laws. A reasonable test in all cases, as it seems to me, is this: Where the right, whatever it may be, has a money value and can be owned and transferred, but cannot be enforced or converted into money against the will of the person owning the right without coming into this state, it is property within this state for the purposes of a succession tax. Thus the right in question is property, because it is capable of being owned and transferred. It is within this state, because the owner must come here to get it. It is subject to taxation, because it is under the control of our laws. It has a money value, because it is virtually money, or can be converted into money upon demand. It is subject to a transfer tax, because the passing, by gift or inheritance, of 'all property, or interest therein, whether within or without this state, over which this state has any jurisdiction for the purposes of taxation,' comes within the expressed intention of the legislature." *Per Vann, J.*, in *In re Houdayer*, 150 N. Y. 37, 40, 44 N. E. 718, 34 L. R. A. 235, 55 Am. St. Rep. 642, reversing 3 N. Y. App. Div. 474, 38 N. Y. Suppl. 323.

A deposit in a trust company by a non-resident in this state for nearly two months before the date of the death of the testator is subject to tax notwithstanding the contention that the deposit was here temporarily for the purpose of investment only. *In re Myer*, 129 N. Y. Suppl. 194.

#### *Deposit with Broker.*

The testator, a resident of Montana, had delivered to stock-brokers \$250,000 to margin stock transactions. The stock purchased had been closed out and this sum was held by the brokers subject to his further instructions as to buying stock or whatever else he saw fit to do with it. The court holds that this relation created an indebtedness the same as obtains between a bank and its

depositors. In the technical sense it undoubtedly was a debt, but within the authorities for purposes of taxation it is regarded as money on account due to the depositor and subject to his order. It was transferred as such to his estate, and is therefore taxable. *In re Daly*, 100 N. Y. App. Div. 373, 91 N. Y. Suppl. 858.

(The opposite result would now be reached under N. Y. St. 1911, c. 732.—*Ed.*)

### *Securities on Deposit.*

The following cases are not applicable to transfers which have taken place since July 21, 1911, under N. Y. St. 1911, c. 732.

The decedent, a resident of Connecticut, died owning certain promissory notes which were in a safe deposit box in the city of New York. With two exceptions the notes were made by non-residents of the state of New York and payment of all of them was secured by property outside of the state. The court holds that they are subject to taxation relying upon *In re Wall*, 105 N. Y. App. Div. 643, 94 N. Y. Suppl. 1166, and *In re Whiting*, 150 N. Y. 27, 44 N. E. 715, 34 L. R. A. 232, 55 Am. St. Rep. 640.

The court remarks that two of the notes are made by residents of New York and says that it is possible that they should be treated differently, but that it does not seem to the court that the residence of the debtor can change the character of property or determine whether it is liable to an inheritance tax. *In re Tiffany*, 128 N. Y. Suppl. 106.

The intestate died in March, 1887, a resident of New Jersey, leaving on deposit with a safe deposit company in New York for safe keeping certain securities, and the court holds that this property has neither passed by will nor been transferred by deed, grant, sale or gift, nor passed by the intestate law of the state of New York, and therefore it is not subject to the tax imposed by the New York statute of 1885, chapter 483. *In re Tulane*, 51 Hun 213, 4 N. Y. Suppl. 36.

Bonds and stock held by a non-resident and deposited in a trust company in New York are physically within the state of New York and constitute property subject to taxation. They were regarded as tangible assets and apparently as in the nature of chattels. *In re Whiting*, 150 N. Y. 27, 29, 44 N. E. 715, 34 L. R. A. 232, 55 Am. St. Rep. 640, modifying 2 N. Y. App. Div. 590, 38 N. Y. Suppl. 131.

*Where only Ground for Taxation that Stock Certificates are in State.*

The court holds that stock in foreign corporations belonging to a non-resident is not taxable in New York simply because the certificates were in the state of New York at the date of the death of the testator. The stock of foreign corporations which formed part of this estate were not property in the legal sense. The share certificates which the testator held represented interests which he possessed in the corporations which issued them and the legal *situs* of that species of personal property is where the corporation exists or where the shareholder has his domicile. *In re James*, 144 N. Y. 6, 12, 38 N. E. 961, affirming 77 Hun 211, 27 N. Y. Suppl. 288, 6 Misc. 206; *In re Bishop*, 82 N. Y. App. Div. 112, 81 N. Y. Suppl. 474, reversing 40 Misc. 64, 81 N. Y. Suppl. 252. Cf., however, *Blackstone v. Miller*, 188 U. S. 189, 23 Sup. Ct. 277, affirming *In re Blackstone*, 171 N. Y. 682, 64 N. E. 1118. See also, St. 1911, c. 732.

*Funds for Investment.*

The decedent, a non-resident, three days before his death sent one hundred thousand (\$100,000) dollars to New York city for the purpose of purchasing stock in a foreign corporation; and he died before the transaction was completed. The court holds that this money is not subject to the New York transfer tax. *In re Leopold*, 35 Misc. Rep. 369, 71 N. Y. Suppl. 1032.

*Insurance Policies.*

The following cases under the old statute are still law under St. 1911, c. 732.

Where an insurance policy is issued by a New York corporation on the life of a non-resident and the corporation has property sufficient to pay the policy in the estate of the insured and has there appointed an attorney to receive service; where the policy had always been kept within the state of the insured; where the insured died there; and executors were appointed there and premiums were paid there, the court holds that this is sufficient to distinguish the case from *Blackstone v. Miller*, 188 U. S. 189.

The court says that in all cases where the tax has been imposed at the domicile of the debtor, the creditor has been forced of necessity to go to that domicile for the collection of his tax, but as that fact did not appear in this case it would be unreasonable to tax the proceeds of this policy in New York. *In re Gordon*, 186 N. Y. 471, 474, 79 N. E. 722, 10 L. R. A. N. S. 1089, affirming 114 N. Y. App. Div. 202, 99 N. Y. Suppl. 630.

"In conclusion we might say that we are unable to contemplate with a confidence born of great optimism the results which would follow from the adoption and enforcement of the doctrine urged by appellant. If the contract in this case is subject to the imposition of a transfer tax, then any contract of insurance issued to a non-resident, passing to and held by his non-resident representatives or assigns, and being administered and enforceable in a foreign jurisdiction, whether in the state of Texas or California, or in some foreign country, would afford the basis of taxation in this state, provided only the policy was issued by a New York corporation and access could be obtained by the tax collector to its proceeds. No distance of domicile of the assured and his transferees or beneficiaries, and no completeness of foreign jurisdiction over administration and enforcement, and no lack of anticipation of such a result upon the part of the assured, would be a bar to the attempted application of the taxing power. It requires no great imaginative processes to picture the limits and the disapproval and friction to which this theory would lead if logically carried to its full length.

"It was undoubtedly the intent of the legislature that the statute under consideration should be liberally construed to the end of taxing the transfer of all property which fairly and reasonably could be regarded as subject to the same, and this court has unequivocally placed itself upon record in favor of construing the statute in the light of such intent. But the proposition now propounded, if adopted, would lead far beyond any point which has thus far been reached, and we do not believe that it would be wise or practicable to adopt it. We can scarcely believe that the various states and countries, which have so carefully and positively protected their citizens holding policies of insurance issued by foreign corporations from the burden and annoyance of being compelled to go to distant forums for the purpose of enforcing their contracts, would permit them to be subjected to a species of taxation based upon an assumed necessity for resort to foreign courts which has thus been obviated. We believe that if the policy being urged upon us were adopted, the great business of insurance now being conducted by corporations chartered and under the protection of the state of New York would be subjected to new and unexpected embarrassment." *Per* Hiscock, J., in *In re Gordon*, 186 N. Y. 471, 483, 79 N. E. 722, 10 L. R. A., N. S. 1089, affirming 114 N. Y. App. Div. 202, 99 N. Y. Suppl. 630.

The same result was reached in *In re Abbott*, 29 Misc. Rep. 567, 61 N. Y. Suppl. 1067; *In re Horn*, 39 Misc. Rep. 133, 78 N. Y. Suppl. 979.

The mere fact that policies of insurance are in this state does not make them subject to tax where they are on the life of a non-resident and issued by a foreign corporation. *In re Gibbs*, 60 Misc. 645, 113 N. Y. Suppl. 939. The court follows *In re Gordon*, 186 N. Y. 471, 79 N. E. 722, 10 L. R. A., N. S. 1089.

*Mortgages Held by Non-resident on New York Real Estate.*

Bonds owned by a non-resident secured by mortgages on land in New York are not subject to tax in New York, *In re Fearing*, 200 N. Y. 340, 93 N. E. 956, affirming 123 N. Y. Suppl. 396, relying upon *In re Bronson*, 150 N. Y. 1, 44 N. E. 707, 34 L. R. A. 238, 55 Am. St. Rep. 632.

Under N. Y. St. 1887, personal property of a non-resident of New York consisting of bonds secured by a mortgage on real estate in New York is not exempt as the property has enjoyed the protection "afforded by the laws of the state" and must pay, as the condition upon which the privilege of allowing it to pass is granted, the tax by law. *In re Clark*, 29 N. Y. St. 650, 9 N. Y. Suppl. 444, 2 Con. Surr. 183.

The testator was a resident of New Jersey possessed of certain bonds and mortgages, the latter covering real estate in New York. The court holds that there is no tax assessable in New York, following *In re Bronson*, 150 N. Y. 1, 44 N. E. 707. *In re Preston*, 75 N. Y. App. Div. 250, 78 N. Y. Suppl. 91, affirming 37 Misc. 236, 75 N. Y. Suppl. 251.

(The opposite result would now be reached under N. Y. St. 1911, c. 732.—*Ed.*)

*Railroad in Several States.*

Under N. Y. St. 1911, c. 732, stock in domestic corporations owned by non-residents is not taxable.

Where a non-resident held stock in a New York railroad corporation it was claimed that the tax should be only upon that proportion of its value which represents the proportion of the capital and assets of the company employed within the state of New York. That where it appeared that only sixty-four per cent of the capital was invested in the state of New York, it is argued that the appraisal of the value of the stock should have been proportionately less. The court holds, however, that the market

value of the stock may or may not represent proportionately the actual value of the corporate properties. "That value, whatever it may be in the market, is the worth attached to an interest in the corporate assets and properties, regarded as a whole. A share of capital stock represents the distinct interest which its holder has in the corporation, and his right to participate in the distribution of the net earnings of the corporation. They evidence the extent of his proprietary interest and their assessment for taxation purposes must be upon that interest, and must be regarded as an entity, and is unapportionable with reference to the *situs* of the corporate properties. The tax imposed by the state upon the transfer of such property upon the decease of its owner is not upon the property which passes; it is upon the right of succession to it." (*In re Palmer*, 183 N. Y. 238, 76 N. E. 16, affirming 102 N. Y. App. 616.)

"The assessment of the stockholder, however, is computed upon the value of his interest in the whole of the corporate property, as evidenced by the number of the shares of stock which he holds. Their market value may, or may not, represent, proportionately, the actual value of the corporate properties. Very often it does not and the market value of the shares of capital stock may be quite disproportionately influenced by considerations, or by circumstances, having little reference to actual conditions. That value, whatever it may be in the market, is the worth attached to an interest in the corporate assets and properties, regarded as a whole. A share of capital stock represents the distinct interest which its holder has in the corporation, and his right to participate in the distribution of the net earnings of the corporation, as a going concern, or in that of its assets, upon a dissolution, is proportionate to the number of shares which he holds. They evidence the extent of his proprietary interest and their assessment for taxation purposes must be upon that interest, regarded as an entity, and is unapportionable with reference to the *situs* of the corporate properties. The tax, imposed by the state upon the transfer of such property, upon the decease of its owner, is not upon the property which passes; it is upon the right of succession to it. The Transfer Tax Act operates upon that general right to succeed to the interest of the deceased in the corporation, and it is inconceivable that the value of the interest, upon which the tax is computed, is determinable by the location of the corporate properties." *Per Gray, J.*, in *In re Palmer*, 183 N. Y. 238, 241, 76 N. E. 16, affirming 102 N. Y. App. Div. 616, 92 N. Y. Suppl. 1137.

In deciding that the stock in the Boston and Albany Railroad was properly taxable in New York only for the amount which represents the property in New York state, the court distinguishes *In re Palmer*, 183 N. Y. 238, on the ground that it did not appear in that case that the corporation had any other corporate existence outside of New York.

The court suggests that there may be difficulties in appraising the property of a railroad corporation to ascertain just what property is in each state where it is incorporated. But the court suggests that an apportionment based upon trackage or figures drawn from the books or balance sheets of the company may doubtless be easily reached which will be substantially correct, and any inaccuracies of which when reflected in a tax of one per cent will be inconsequential. *In re Cooley*, 186 N.Y. 220, 232, 78 N. E. 939, 10 L.R.A.N.S. 1010, reversing 113 N.Y. App. Div. 388.

"I see nothing in the statute which prevents us from paying decent regard to the principles of interstate comity and from adopting a policy which will enable each state fairly to enforce its own laws without oppression to the subject. This result will be attained by regarding the New York corporation as owning the property situate in New York and the Massachusetts corporation as owning that situate in Massachusetts, and each as owning a share of any property situate outside of either state or moving to and fro between the two states, and assessing decedent's stock upon that theory. That is the obvious basis for a valuation if we are to leave any room for the Massachusetts corporation and for a taxation by that state similar in principle to our own without double taxation." *Per* Hiscock, J., in *In re Cooley*, 186 N. Y. 220, 228, 78 N. E. 939, 10 L. R. A. N. S. 1010, reversing 113 N. Y. App. Div. 388, 98 N. Y. Suppl. 1006.

Where a corporation has but a single corporate existence under the laws of one state there is no difficulty in determining in such a case that a shareholder in such a corporation has an interest in all the corporate property wherever situated. But where stock in the Boston and Albany Railroad, incorporated in several states, is held by a non-resident, the sole jurisdiction of New York to assess it is based upon the theory that it is held in the company as a New York corporation.

If the courts of New York hold that this stock is assessable at its full value in New York, then the courts of Massachusetts should also hold that it is assessable for its full value in Massa-

chusetts, which would lead to great injustice as double taxation. Double taxation is one which the courts should avoid whenever it is possible within reason to do so. (*Matter of James*, 144 N. Y. 6, 11.) It is never to be presumed. Sometimes tax laws have that effect, but if they do it is because the legislature has unmistakably so enacted. All presumptions are against such an imposition. (*Tennessee v. Whitworth*, 117 U. S. 129.) *In re Cooley*, 186 N. Y. 220, 227, 78 N. E. 939, 10 L. R. A. N. S. 1010, reversing 113 N. Y. App. Div. 388, 98 N. Y. Suppl. 1006.

"The Boston and Albany Railroad Company is a consolidation formed by the merger of one or more New York corporations and one Massachusetts corporation. The merger was authorized and the said consolidated corporation duly and separately created and organized under the laws of each state. It was, so to speak, incorporated in duplicate. There is but a single issue of capital stock representing all of the property of the consolidated and dual organization. Of the track mileage about five-sixths is in Massachusetts and one-sixth in New York. The principal offices, including the stock transfer office, are situated in Boston and there also are regularly held the meetings of its stockholders and directors. The deceased was a resident of the state of Connecticut and owned four hundred and twenty-six shares of the capital stock, the value of which for the purposes of the transfer tax was fixed at the full market value of \$252.50 per share of the par value of \$100." *Per* Hiscock, J., in *In re Cooley*, 186 N. Y. 220, 223, 78 N. E. 939, 10 L. R. A. N. S. 1010, reversing 113 N. Y. App. Div. 388, 98 N. Y. Suppl. 1006.

The testator, a resident of Illinois, died in 1902, and the court holds that his interest in the New York Central Railroad Company, a New York corporation, is taxable under the New York statute, following *In re Bronson*, 150 N. Y. 1. *In re Palmer*, 183 N. Y. 238, 240, 76 N. E. 16, affirming 102 N. Y. App. Div. 616, 92 N. Y. Suppl. 1137.

The court holds that where a railroad has lines in different states the appraisal shall be apportioned on the basis of the total mileage in each state and not on the mileage between terminals. Branch lines are then taken into account as elements of value. *In re Thayer*, 58 Misc. 117, 110 N. Y. Suppl. 751.

#### *Stock in Domestic Corporations Owned by Non-residents.*

Under St. 1911, c. 732, stock in domestic corporations owned by non-residents is not taxable in New York.



Stock in a national bank doing business in New York owned by a non-resident stockholder is subject to the transfer tax although the certificate was out of the state at the death of the testator. *In re Cushing*, 40 Misc. Rep. 505, 82 N. Y. Suppl. 795.

Where the testatrix, a resident of Connecticut, died leaving use of certain stock in a New York corporation to her mother for life and on her death to her niece, both the life tenant and the remainderman took their interest in the property as a matter of sovereign favor. The life tenant cannot complain that the principal of which she is entitled to the use is diminished by the tax, nor can the remainderman resist the imposition of the tax upon the ground that she may never come into possession of the property as she took a vested indefeasible interest in the property. *In re Bushnell*, 172 N. Y. 649, 65 N. E. 1115, affirming 73 N. Y. App. Div. 325, 77 N. Y. Suppl. 4.

The testator, a non-resident, died in 1894 and distribution was made under the direction of the probate court in Connecticut where the testatrix lived in 1895. In April, 1897, the comptroller of the city of New York instituted a proceeding in the surrogate's court for the determination of the tax on certain shares in a New York corporation.

The court remarks that in the matter of *Bronson*, counsel did not challenge the jurisdiction of the surrogate's court which imposed the tax and therefore the question was not considered by the court. The surrogate's jurisdiction was given under N. Y. St. 1892, c. 399, s. 10. The question may be determined by an answer to the question, Had the court power to issue letters?

The court holds that this interest which the testator had in the New York corporation must be held to the property within the meaning of the word as used in the Code giving the surrogate's court jurisdiction over estates for purposes of administration. And hence, the surrogate's court has under section 10 of the inheritance act jurisdiction to impose the tax. *In re Fitch*, 160 N. Y. 87, 43 N. E. 701, affirming 39 N. Y. App. Div. 609.

"The appellant further contends that the property in question was not 'within this state,' according to the true meaning of the statute, and the contention is supported by the argument that it would be unreasonable to tax money found upon the person of a non-resident who died while traveling in this state. We should hesitate before applying the statute to any property casually brought into the state for a temporary purpose, as by a visitor or

traveler, but the record before us does not present such a case. It might well be held that such property, although literally 'within this state,' was not here in the sense meant by the statute, on account of the transitory and accidental character of its presence and the immediate custody of the owner. (*Herron, Treasurer, v. Keeran*, 59 Ind. 472, 476.) Where, however, the money of a non-resident is invested in this state, as it was by Mr. Romaine in the bond and mortgage in question, and in the deposits made by him in the savings banks, or where the property of a non-resident is habitually kept, even for safety, in this state, we think that the statute applies both in the letter and spirit. Such property is within this state in every reasonable sense, receives the protection of its laws and has every advantage from government, for the support of which taxes are laid, that it would have if it belonged to a resident." *Per Vann, J.*, in *In re Romaine*, 127 N. Y. 80, 88, 27 N. E. 759, 12 L. R. A. 401, affirming 58 Hun 109.

*Loans from and to Non-resident.*

Loans from a resident of New Jersey to another resident of New Jersey do not create a balance within the state of New York subject to the transfer tax, and the fact that in the inventory the debtor is described as a banker who does business in New York cannot vary the result, where no pass book or voucher was ever delivered, and it does not appear that the decedent ever drew checks upon the account or that it was to be repaid otherwise than upon oral demand. *In re Bentley*, 31 Misc. Rep. 656, 66 N. Y. Suppl. 95.

**"By Will or Intestate Law" — Curtesy, Dower and Statutory Rights of Surviving Spouse.**

*Curtesy.*

The words "intestate laws of this state" are defined by N. Y. St. 1911, c. 732, to include the curtesy or statutory rights of a husband on the death of his wife.

Under the statute of 1905, chapter 360, section 220, the estate by curtesy was not taxable. This estate is an ancient one arising from the marriage relation and not by inheritance or from the wife's estate and is not an incident to the wife's death and intestacy. *In re Starbuck*, 137 N. Y. App. Div. 866, 122 N. Y. Suppl. 584, affirming 63 Misc. 156, 116 N. Y. Suppl. 1030.

Personal estate of a resident of New York who dies intestate

leaving a husband and no descendants is not subject to the inheritance tax as the estate devolves on the husband as a matter of law on account of the marriage relation.

When a wife, a resident of the state, dies without a will, leaving her husband and no descendants, there is no taxable transfer as the husband takes by virtue of his marriage, and not by virtue of the death of his wife.

To uphold the tax it must be found that the husband has taken the property "by the intestate laws of this state" and the court holds that the intestate laws refer simply to the statutes governing the distribution of the decedent's property. *In re Green*, 68 Misc. 1, 124 N. Y. Suppl. 863.

#### *Dower Deducted.*

The widow's dower became vested as an inchoate estate upon her marriage and consummate upon the death of her husband independent of the will and not by virtue thereof, and is therefore not subject to the transfer tax. *In re Weiler*, 122 N. Y. Suppl. 608.

A will gave to the widow all the decedent's personal estate for life and devised all the real estate to the executors under a trust to dispose of it for the benefit of persons other than the widow. The will contained no direction that the provision in favor of the widow should be in lieu of dower. Under the law the widow is not put to her election as between dower and the provision by the will; and therefore the value of the wife's dower since it is not taxable should be deducted from the gross value of the lands for the purposes of the inheritance tax. *In re Shields*, 68 Misc. 264, 124 N. Y. Suppl. 1003; *In re Riemann*, 42 Misc. 648, 87 N. Y. S. 731.

#### *Legacy in Lieu of Dower.*

A legacy accepted in lieu of dower is subject to the inheritance tax, as by the acceptance of the legacy the widow elected to take under the will and release all claim to dower (*In re Riemann*, 42 Misc. Rep. 648, 87 N. Y. Suppl. 731) although it was claimed that the legacy was given for consideration. *In re De Graaf*, 24 Misc. Rep. 147, 53 N. Y. Suppl. 591, 2 Gibbons 516.

#### *Statutory Exemptions.*

The husband's statutory rights on the death of his wife are subject to tax under the act of 1911, c. 732.

The exemption to the widow of certain articles enumerated under the New York statute renders them not subject to the transfer tax whether the decedent died testate or intestate. This

property is not to be included in estimating the value of the estate subject to tax. *In re Page*, 39 Misc. Rep. 220, 79 N. Y. Suppl. 382.

A husband claimed that a deduction should be made from the estate of his wife of the exemptions enumerated in the New York Code, section 2713, sub-division 3, of things which he would have been entitled to had they existed, but as they did not exist he was nevertheless entitled to receive their assumed cash value in lieu of them, and that accordingly such value is no part of the estate to be transferred under the will and subject to the tax. The husband relied on *In re Williams*, 31 N. Y. App. Div. 617, 52 N. Y. Suppl. 700, but the court decides that no such exemption should be allowed as the tax law itself makes no provision for the deduction from the taxable estate of the value of articles which would have been exempted for the use of husband or wife had such articles existed, but which do not in fact exist. *In re Libolt*, 102 N. Y. App. Div. 29, 92 N. Y. Suppl. 175.

### **"In Contemplation of the Death."**

#### *Definition.*

The words "in contemplation of the death" do not refer to that general expectation which every mortal entertains, but rather the apprehension which arises from some existing condition of body or some impending peril. *In re Baker*, 178 N. Y. 575, 70 N. E. 1094, affirming 83 N. Y. App. Div. 530, 82 N. Y. Suppl. 390, 38 Misc. 151, 77 N. Y. Suppl. 170.

#### *Gifts Inter Vivos.*

The expression "in contemplation of death" does not refer simply to a gift *causa mortis*, but does include a gift *inter vivos*. *In re Palmer*, 117 N. Y. App. Div. 360, 102 N. Y. Suppl. 236. *In re Price*, 62 Misc. 149, 116 N. Y. Suppl. 283.

#### *Good Faith the Test.*

The court holds that "the rule may be stated to be that the property transferred by gifts *inter vivos* is not taxable under the provisions of the taxable transfer act unless made and received with the intent and for the purpose of evading its provisions." *In re Spaulding*, 163 N. Y. 607, 57 N. E. 1124, affirming 49 N. Y. App. Div. 541, 549.

The court considers the evidence as to the good faith of the transaction by which the grantor made a deed on trust to care for the testator during his lifetime, in *In re Thorne*, 162 N. Y. 238, 56 N. E. 625, 44 N. Y. App. Div. 8, 60 N. Y. Suppl. 419.

The testator, at the age of eighty-three, gave his daughter certificates of stock by transferring his certificates in writing on the back and delivering them to the daughter; but the certificates were never transferred on the books of the company and the testator continued to receive the dividends and act as officer of the company in question. The court finds that though the facts are open to doubt that no fraud or bad faith appeared to the surrogate, and his decision on that matter is therefore final and no tax is therefore due. *In re Bullard*, 76 N. Y. App. Div. 207, 78 N. Y. Suppl. 491, affirming 37 Misc. 663, 76 N. Y. Suppl. 309.

*Decedent Critically Ill.*

Where the decedent was suffering from a chronic disease and ten days before his death he sends for his attorney telling him that he desired to make such a disposition of his property as would save his son the nuisance of a will contest and executes deeds by which he conveys all his real estate to his adopted son, this transfer is subject to the inheritance tax. *In re Price*, 62 Misc. 149, 116 N. Y. Suppl. 283.

Where a woman seventy-nine years old was afflicted with consumption from which she knew she could not recover and was very weak, and made a transfer of property eight days before her death, the court finds that this was made in contemplation of death under the New York statute. *In re Birdsall*, 22 Misc. Rep. 180, 49 N. Y. Suppl. 450, 2 Gibbons 293.

*Consideration. Transfer to Erect Monument.*

A transfer of stock to transferees who agree as part of the consideration to erect a monument is not subject to taxation as the provision for a monument is considered part of the funeral expenses and so not subject to the tax as ordinarily understood. *In re Edgerton*, 158 N. Y. 671, 52 N. E. 1124, affirming 35 N. Y. App. Div. 125, 54 N. Y. Suppl. 700. See further, as to gifts for a monument, *post* p. 895.

*Payment of Annuity.*

A transfer of stock to persons who in return agree to pay an annuity to the transferor and to deposit the stock as security with a trust company for the payment of the annuity is not a transfer in contemplation of death subject to the inheritance tax. *In re Edgerton*, 158 N. Y. 671, 52 N. E. 1124, affirming 35 N. Y. App. Div. 125, 54 N. Y. Suppl. 700.

*Support.*

A deed reserving to the grantor a right to reside on premises and made in consideration of support is not in contemplation of death and is not subject to the transfer tax. *In re Hess*, 187 N. Y. 554, 80 N. E. 1111, affirming 110 N. Y. App. Div. 476, 96 N. Y. Suppl. 990.

*To Relinquish Child.*

Where the testator made an agreement with the mother of his illegitimate child on consideration that the child should be surrendered to him to give his property to the child on his death, the property is not subject to the transfer tax on his death as this transfer is by contract of bargain and sale, and such contract made in 1862 was not in contemplation of death and therefore it is not subject to tax. *In re Demers*, 41 Misc. Rep. 470, 84 N. Y. Suppl. 1109.

*As Property a Burden.*

Where an old man, eighty-six years old, physically feeble but mentally active, makes two gifts to his children of securities of large amounts stating to them that his property is a burden to him, that he intends to give it to them and will divide a part of it at the present time, and where the securities are actually delivered and transferred to the donees, and the testator exercises no control over them whatever, these gifts are not gifts in contemplation of death within the meaning of the New York transfer statute. *In re Spaulding*, 163 N. Y. 607, 57 N. E. 1124, affirming 49 N. Y. App. Div. 541.

The court finds on the evidence that a certain gift of stock by a husband in good health to his wife was not made in contemplation of death where it appeared that he was gradually failing and desired to be relieved from the cares of business. *In re Graves*, 52 Misc. 433, 103 N. Y. Suppl. 571.

*For Convenience.*

The testator was the president and the owner of nearly all the stock in a corporation and it was his duty to sign all corporation notes, drafts, checks and other papers, but this duty becoming burdensome during his illness and he having been told by his physician that when he recovered he would have to take a long vacation, he expressed the desire that he might transfer his stock

to his wife, so that she could become a member of the company at once and transact the business in his place. He did this, retaining only one share for himself so that he might continue to be a member of the company and have a right to vote at its meetings.

The court holds that this is not a transfer in contemplation of death although the testator died within three weeks after the transfer. The testator had a natural right to give this stock to his wife and his wife took possession of it and voted upon it and the circumstances under which it was transferred show that his death was not in mind in making the transfer. The fact that he made a will on the same day was not evidence of the contemplation of death except as a remote contingency. There is a strong dissenting opinion on the ground that the testator had been advised to put his worldly affairs in order and that he was too weak to sign the assignment and was at the time desperately ill, and that positive evidence of an intention to evade the statute should not be required. *In re Mahlstedt*, 67 N. Y. App. Div. 176, 73 N. Y. Suppl. 818.

*Heirs not Bound by Statement of Beneficiary.*

The testator died in 1893 giving his nephew a life interest in certain property and providing that in default of a will the remainder of the estate should pass to the heirs of the nephew. At the appraisal of the estate of the testator the nephew stated that the testator at the time of his death was the owner of certain real estate although the fact was that the testator had previously executed and delivered to the nephew a deed of the property.

The court holds that the heirs of the nephew are not bound by his acts but have a right to rely upon the deed rather than upon the will and that therefore they cannot be assessed for an inheritance tax for the transfer of this real estate. *In re Mather*, 179 N. Y. 526, 71 N. E. 1134, affirming 90 N. Y. App. Div. 382; 85 N. Y. Suppl. 657, 84 N. Y. Suppl. 1105, 41 Misc. 414.

*Withholding Facts Evidence of Bad Faith.*

Where the testator a few months before his death made without consideration an assignment of all his property to his son, the court on all the evidence and in view of the evasiveness of the son in answering questions holds that the assignment was taken on a trust to carry out the will of the testator.

The court holds that the heirs are the only ones who have the power of showing by direct evidence just the extent and nature of

the trust and that a lack of evidence on this question shows that the assignment was not made in good faith. *In re Palmer*, 117 N. Y. App. Div. 360, 102 N. Y. Suppl. 236.

*Deeds Unrecorded and Undelivered.*

Where the decedent made deeds of his farms and the deeds remained unrecorded and in the possession of the grantor until his death; that the insurance continued to be payable to the grantor and he made contracts with the tenants; that the son continued to reside on the home farm and work it; that the farms continued to be assessed to the grantor who paid the taxes; that the crops were mostly marketed at the grantor's warehouse, and the accounts kept in his books, practically as though he owned them; that all settlements with the tenants were made by the grantor, is evidence sufficient to show that the transfer is within the statute as intended to take effect only on death. *In re Jones*, 65 Misc. 121, 120 N. Y. Suppl. 862.

*Deeds not Delivered.*

Where a testator signed certain deeds and other papers and placed them in envelopes described as property of persons by whom they were endorsed, and placed the envelopes in a box in a bank, this property was still his for the purposes of the tax where he received the income from it and treated it as his own during his life. *In re Sharer*, 36 Misc. Rep. 502, 73 N. Y. Suppl. 1057.

*Deed Signed by Decedent under Contract but not Delivered.*

Where at the time of the decedent's death she was under contract to sell lands in another state and left a conveyance thereof which was delivered on the day after her death in consideration of the price named in the contract, as the land was not subject to tax there is no tax on its proceeds. *In re Baker*, 67 Misc. 360, 124 N. Y. Suppl. 827.

*In Trust until Majority.*

Where a trust deed was executed dated December 1, 1892, directing the trustees to pay the net income to the guardian of a certain grandson until his majority on December 3, 1895, when the principal shall be paid to him, this was not subject to the inheritance tax. *In re Masury*, 159 N. Y. 532, 53 N. E. 1127, affirming 28 N. Y. App. Div. 580.



*Use Reserved to Grantor.*

In 1901 the grantor transferred by deed all his real and personal property in consideration of the grantee's services rendered and to be rendered in trust nevertheless for the use and benefit of the grantor during the term of his natural life, and at his death to become the property of the grantee absolutely. There was a collateral agreement to the effect that the grantor during his life should have the right to use any portion of the properties mentioned. As the grantee never got full title the tax was assessable. *In re Skinner*, 45 Misc. 559, 92 N. Y. Suppl. 972 (s. c. 106 N. Y. App. Div. 217, 94 N. Y. Suppl. 144).

A grantor gave a trust transferring property described in trust for his three sisters, reserving to himself certain powers, namely, to direct the payment of the income to himself for life, or to such other persons as he may designate in writing; to withdraw the securities and secure others; to alter or amend the trust and add property thereto and terminate the same at any time by a written notice to a trustee.

The court holds that the donor has reserved during his life such numerous and extensive powers over the property transferred as to preclude the legitimate inference of an intention on his part that they were to take effect in absolute possession or enjoyment before his death. If a person intends in good faith to make an absolute gift of his property during his life to others and thereby make a provision for them which shall not be contingent upon the event of his death, there is no prohibition in the act in that respect. But in this case the trust deed did not constitute an absolute gift of the grantor's property during his life. *In re Bostwick*, 160 N. Y. 489, 55 N. E. 208, affirming 38 N. Y. App. Div. 223, 56 N. Y. Suppl. 495.

Where the decedent deposited money in savings banks in trust for his children these interests are identical with those passing by a will. The decedent reserved to himself all of the rights of ownership in the interests until his death when he is presumed to have intended that each trust shall come to an end and that the funds shall revert to his estate if the beneficiaries do not survive him. *In re Barbey*, 114 N. Y. Suppl. 725.

Where a testator has given personal property to a trust company in trust to pay the income from the fund to the use of the testator during his natural life and upon his death to assign and transfer the property to such person and in such shares as the testator should by his last will and testament or instrument in the

nature thereof appoint, and in default of such appointment to the next of kin of the testator, the court finds that this trust is not irrevocable but that the deceased retained after its execution such an interest or ownership as to render it taxable under the provisions of the statute. The trust company never became owner of the property and "a fair construction should be given to the statute and not a forced or technical one. No opportunity should be given parties to evade the statute and prevent the taxation of the property fairly within its provisions and we are unable to give any construction to the statute which will aid parties in the evasion of the law." *In re Ogsbury*, 7 N.Y. App. Div. 71, 39 N.Y. Suppl. 978.

*Remainders Taking Effect on the Death of the Donor.*

Where a trustee gives the income of his estate to beneficiaries for life and the principal to them at his death, it is as to the principal a transfer intended to take effect at the death, and hence subject to the inheritance tax. *In re Patterson*, 127 N. Y. Suppl. 284.

The decedent in 1896 transferred a large amount of property to one Crispell on an oral agreement that principal and income should belong to Crispell, and that he could dispose of it at any time he chose, but that the decedent was to have the income as long as he lived, although the gift was to be absolute to Crispell. In 1897 the decedent made another gift to Crispell on a written agreement that the decedent was to have for life such part of the net income as he might wish, with power to the decedent to give his sister ten thousand dollars out of the security transferred. The court holds that under these agreements the testator reserved a life interest to himself; that although possession of the securities was given to the donee, this did not make him their absolute owner and the donee during the donor's life held the securities in trust to pay the income to the donor. The gift is therefore taxable under the transfer act of 1896 as a transfer to take effect after the death of the donor. *In re Cornell*, 170 N. Y. 423, 63 N. E. 445, modifying 66 N. Y. App. Div. 162, 73 N. Y. Suppl. 32.

Where the decedent transferred her property to trustees on trust to collect the income and apply the same to her use during her life, and after her death to divide and pay over the same and the proceeds among her three nieces, reserving the power to modify the instrument, the court holds that it is not important to determine whether the trust instrument was made in contemplation of death. The real question is whether the remainders which the

nieces took were intended to "take effect in possession or enjoyment" at or after the death of the donor. And the court holds that it is quite clear that these nieces did take by an instrument intended to take effect at or after the death of the donor. *In re Green*, 153 N. Y. 223, 47 N. E. 292, reversing 7 N. Y. App. Div. 339.

The decedent in 1893 transferred to his four daughters eleven shares of stock in a certain company and the daughters on the same day delivered to him an instrument reciting that he had transferred the stock on condition that he is to receive all dividends during his life; and also on condition that he has the right to vote upon the stock as though no transfer had been made. The agreement further provided that it was not revocable, but to continue in full force until the death of the decedent. The court holds that the two instruments being executed at the same time must be construed together as a single instrument; that the effect of these was to transfer to the daughters the remainder in stock after the donor's death reserving to the latter an estate for his life. The court relying on *In re Green*, 153 N. Y. 223, holds that this is a gift of remainder after the death of the donor and is taxable as a transfer "intended to take effect in possession or enjoyment at or after such death." *In re Brandeth*, 169 N. Y. 437, 62 N. E. 563, 58 L. R. A. 148, reversing 58 N. Y. App. Div. 575, 69 N. Y. Suppl. 142.

#### *Deposit in Trust.*

A deposit in a savings bank in trust for another is taxable so far as it represents deposits made by the decedent out of his own funds, but not so far as it was contributed by a third party. *In re Rosenberg*, 114 N. Y. Suppl. 726.

#### **"WHENEVER ANY PERSON . . . SHALL EXERCISE A POWER OF APPOINTMENT."**

#### **Nature and Validity of Tax.**

The court holds that the statute of 1897 does not attempt to impose a tax upon property, but upon the exercise of the power of appointment. The beneficiary is compelled to resort to the will in order to establish his rights, for the deed alone would not suffice. "The privilege of making a will is not a natural or inherent right, but one which the state can grant or withhold in its discretion. If granted, it may be upon such conditions and with such limitations as the legislature sees fit to create. The payment of a sum in

gross, or of an amount measured by the value of the property affected, may be exacted, or the right may be limited to one or more kinds of property and withdrawn as to all others. The legislature could provide that no power of appointment should be exercised by will, or that it should be exercised only upon the payment of a gross or ratable sum for the privilege. It could exact this condition, independent of the date or origin of the power. All this necessarily flows from the absolute control by the legislature of the right to make a will." Quoting *In re Vanderbilt*, 163 N. Y. 597, and *In re Dows*, 167 N. Y. 227. *Per Vann, J.*, in *In re Delano*, 176 N. Y. 486, 491, 64 L. R. A. 279, 177 N. Y. 540, 69 N. E. 1122, reversing 82 N. Y. App. Div. 147, 81 N. Y. Suppl. 762 (affirmed *sub nomine, Chanler v. Kelsey*, 205 U. S. 466, 27 S. Ct. 550, 51 L. Ed. 882).

### **Governed by Law in Effect at the Exercise of the Power.**

The testator died in 1885, and at the time of his death the trust fund in question was not taxable under the collateral inheritance law. The will created a power to leave by will which was executed in 1899 when the trust funds were subject to the inheritance tax.

It was claimed that the execution of the power of appointment related back to the will of the testator and that therefore everything connected with the exercise of that power is to be regarded as coming under the administration of the estate of the testator and must be governed by the law in operation at that time and before the passage of the amendment of 1897.

The court says that there was no complete vesting of an estate in the children of the appointee under the power until that power was exercised, and that the amount of the tax can only be determined after the execution of the power. The court holds that the law cannot be applied with more certainty than by making the tax relate to the date of the determination of the estate. *In re Vanderbilt*, 163 N. Y. 597, 57 N. E. 1127, affirming 50 N. Y. App. Div. 246, 63 N. Y. Suppl. 1079.

### **Tax Assessed on Present Value of Property Appointed.**

Where a life tenant has power to appoint the remainder and does so, the tax should be levied on the whole value of the property transferred and not merely on the value of the remainder as assessed under the will of the original testator. *In re Tucker*, 27 Misc. Rep. 616, 59 N. Y. Suppl. 699.

**Relationship to Donee of Power the Test.**

The statute of 1897 renders the exercise of a power of appointment a transfer taxable under the act, and therefore the relationship of the appointees should be considered for the purpose of the inheritance tax as though the property to which the appointment relates belonged absolutely to the donee of such power and had been bequeathed or devised by such donee by will. Therefore, the exercise of the power of appointment by devise to lineal descendants of the donee who were collateral heirs of the donee should be taxed at the rate of five per cent and not of one per cent. *In re Walworth*, 66 N. Y. App. Div. 171, 72 N. Y. Suppl. 984.

**Where Power Created by Grant, before the Existence of the Inheritance Tax.**

It is immaterial how the power is created, whether by will or by deed, in considering the right to tax the exercise of the power. *In re Delano*, 176 N. Y. 486, 493, 64 L. R. A. 279, 177 N. Y. 540, 69 N. E. 1122, reversing 82 N. Y. App. Div. 147, 81 N. Y. Suppl. 762, affirmed *sub nomine*, *Chanler v. Kelsey*, 205 U. S. 466, 27 S. Ct. 550, 51 L. Ed. 882.

Notwithstanding the common law rule that the estate created by the execution of a power takes effect as if created by the original deed, for some purposes the execution of the power is considered a source of title. The New York court found where the original deed creating the power was executed before the passage of the statute, but the power was executed by the will after the passage of the statute, that the inheritance tax was properly levied. That the will was effectual to transfer the estate was decided by the New York court and its decision on the question was binding upon the court of appeals. The supreme court says that it cannot say that property has been taken without due process of law and that the effect has not been to violate any contract right of the parties. *Chanler v. Kelsey*, 205 U. S. 466, 27 S. Ct. 550, 51 L. Ed. 882 affirming *In re Delano*, 176 N. Y. 486, 64 L. R. A. 279, 177 N. Y. 540, 69 N. E. 1122. (Holmes and Moody, JJ., dissenting, on the ground that this was a succession tax and it was plain that there was no succession for it to operate upon, as the property passed under the original deed and not under the appointment.)

### Power Created by Will before the Existence of the Inheritance Tax.

The testator died in 1880, leaving real estate in trust to pay the income to his son for life, and upon the death of the son the property was to go as the son might by last will appoint. But in case the son died intestate, then the property was to vest in his children. And the will gave the trustee power of sale of the real estate which was exercised during the life of the son and the proceeds invested in stocks of corporations. The son died January 13, 1899, leaving a will exercising the power. And the court imposed a tax on the property passing under this power of appointment both on the life estates and on the remainders created by the will of the son.

The court holds that whatever be the technical source of title of a grantee under a power of appointment, it cannot be denied that in reality and substance it is the execution of the power that gives the grantee the property passing under it. When the father "devised this property to the appointees under the will of his son, he necessarily subjected it to the charge that the state might impose on the privilege accorded to the son of making a will. That charge is the same in character as if it had been laid on the inheritance of the estate of the son himself." . . . "Had the fund passed in default of an exercise of the power of appointment, a very different proposition would be presented." *In re Dows*, 167 N. Y. 227, 232, 60 N. E. 439, 52 L. R. A. 433, 88 Am. St. Rep. 508, affirming 60 N. Y. App. Div. 630 (affirmed *sub nomine*, *Orr v. Gilman*, 183 U. S. 278, 22 S. Ct. 213, 46 L. Ed. 196).

The testator died in 1890, and his son died in 1899, leaving a will exercising a power of appointment given him in the will of his father, and it was claimed that the New York statute of 1897, section 220, subdivision 5, was in violation of the fourteenth amendment, and in violation of section 10 of article 1 of the United States constitution. The court quotes at length from *Carpenter v. Pennsylvania*, 17 How. 456, where a retroactive state statute was held constitutional.

The court finds that the New York court of appeals held that it was the execution of the power of appointment which subjected grantees under the statute to the transfer tax. This conclusion is binding upon this court in so far as it involves a construction of the will and of the statute. Even if the view of the New York court was wrong, it was an error which the United States supreme court has no power to review. *Orr v. Gilman*, 183 U. S. 278, 288,

22 S. Ct. 213, 46 L. Ed. 196, affirming *In re Dow*, 167 N. Y. 227, 60 N. E. 439, 52 L. R. A. 433, 88 Am. St. Rep. 508, affirming 60 N. Y. App. Div. 630.

It is quite immaterial that there was no statute imposing a succession tax of any kind in force when the power was created. That transfer is not taxed and the statute makes no effort to reach it. It is the practical transfer through the exercise of the power by will that is taxed and nothing else under N. Y. St. 1897. The right of the legislature to impose a tax on the privilege of exercising a power by will is not affected by the fact that no such tax was imposed when the power was created. *In re Delano*, 176 N. Y. 486, 494, 64 L. R. A. 279, 177 N. Y. 540, 69 N. E. 1122, reversing 82 N. Y. App. Div. 147, 81 N. Y. Suppl. 762, affirmed *sub nomine*, *Chanler v. Kelsey*, 205 U. S. 466, 27 S. Ct. 550, 51 L. Ed. 882.

The testator died in 1869 leaving property to his wife for life with a power of appointment which she exercised by a will in 1900. It is the exercise and not the creation of the power of appointment which affects the transfer upon which the tax has been forced; and hence the fund must for taxing purposes be regarded as having passed from a life tenant to her appointee. *In re Rogers*, 172 N. Y. 617, 64 N. E. 1125, affirming 71 N. Y. App. Div. 461, 75 N. Y. Suppl. 835.

The original testator died in 1877 leaving property in trust for a life tenant with a power of appointment on her death. She died in 1899, and the court holds that under the amendment of 1897, the property passing under her will in exercising the power is subject to the tax. *In re Potter*, 51 N. Y. App. Div. 212, 64 N. Y. Suppl. 1013.

#### **Where Original Testator a Non-resident.**

The testator died in Maryland, where his will was proved. He left his property to trustees upon trust and gave a power of appointment. The donee of the power died in 1902, being a resident of New York. He exercised the power by will, which was admitted to probate in New York and subsequently in Maryland. There is no transfer subject to tax in New York, as all of the assets are in the state of Maryland held by trustees residing in Maryland under a will of a citizen of Maryland pursuant to the laws of that state. *In re Thomas*, 39 Misc. Rep. 136, 78 N. Y. Suppl. 981.

#### **Where Donee is a Non-resident.**

Where a testator died in 1870 a resident of New York, leaving a will under which he gave his daughter a life estate with the power

of appointment; and the daughter died in 1908, being a resident of the state of Rhode Island, leaving a will by which she exercised the power, no tax can be imposed under New York law, as the life tenant in making her will exercised a privilege granted by the laws of her own state and not by those of the state of New York. *In re Fearing*, 200 N. Y. 340, 93 N. E. 956, affirming 123 N. Y. Suppl. 396.

The exercise of a power of appointment is under the statute of 1897 the basis for the tax, and where the grantor of the power was a resident of New York but the donee of the power was a resident of New Jersey, where it was exercised. The only privilege granted by the state of New York was to permit the transfer of the property and locate it in New York to pass to the appointees in accordance with the provisions of the will probated in New Jersey; and therefore the jurisdiction of the state of New York is limited to the property situated in this state at the time of the death of the donee of the power. *In re Kissel*, 65 Misc. 443, 121 N. Y. Suppl. 1088, affirmed in 142 N. Y. App. Div. 934, 127 N. Y. Suppl. 1127.

### **Where Exercise of Power is Like Will.**

Where the will makes a bequest to a life tenant with a power in the life tenant, those who take on the exercise of this power exactly as in the will take under the will of the original testator and hence are not taxable if he died before 1885. *In re Backhouse*, 185 N. Y. 544, 77 N. E. 1181, affirming 110 N. Y. App. Div. 737, 96 N. Y. Suppl. 466.

The testator died in 1890 leaving property in trust to a life tenant and on her death to such children of a relative as she by last will and testament shall appoint. The donee of the power died in 1903 exercising the power. It appears that there was a necessity for exercising the power, that it cannot be treated as a nullity and that therefore the transfer tax under the statute was properly assessed. *In re Cooksey*, 182 N. Y. 92, 98, 74 N. E. 880, affirming 100 N. Y. App. Div. 516, 91 N. Y. Suppl. 1091.

Where the testator died in 1869, giving property to his granddaughter subject to the exercise of a power of appointment, and the power of appointment was exercised in favor of the granddaughter, the intent to exercise the power neither increased nor diminished the estate of the granddaughter and did not affect in any degree the value of her grandfather's gift. It did not affectively transfer any property whatever, for she took from her grandfather and nothing was added or taken away from the gift by the



exercise of the power through the will of her mother. The execution of the power left the title where it stood before and the result was the same as if there had been no power to exercise. The exercise of a power which leaves everything as it was before is a mere form with no substance. The transfer tax is imposed upon the right to succession or on the privilege of making a will and thereby exercising the power of appointment.

The donee of the power exercised it over property belonging to her as well as property derived from the grandfather, and the court holds that the fact that the granddaughter accepted under the will of the appointor property which belonged to her does not prove that she accepted the title tendered by the appointment, although both gift and appointment were made by the same instrument. The granddaughter could claim as a devisee of her mother and disclaim as her appointee. *In re Lansing*, 182 N. Y. 238, 245, 74 N. E. 882, modifying 103 N. Y. App. Div. 596.

The testator died in 1892, leaving a will which created a trust for the benefit of certain life tenants, and provided that on the death of either leaving issue a share of the one so dying shall, unless otherwise disposed of as directed by his last will, be held for the use and benefit of his lawful issue. The life tenant died in 1905, leaving a widow and four children surviving, and a will providing for those children. The court holds that the surrogate should not impose a transfer upon the children's share in the trust property as they take their interests directly under the provisions of the will of their grandfather and not by virtue of the exercise of the power of appointment given their father. The father's will only "otherwise disposed of" one-fifth of the property by giving it to his wife and the balance went as provided in the will of the grandfather. Instead of being benefited the interests of the children were injured by the exercise of the power and therefore they took under the will of their grandfather and their estate is not subject to the transfer tax. *In re Ripley*, 192 N. Y. 536, 84 N. E. 574, affirming 122 N. Y. App. Div. 419, 106 N. Y. Suppl. 844.

Where the will of the donee of a power neither adds to nor takes from any of the final beneficiaries the benefits which the will of the donee of the power expressly conferred upon them, no inheritance tax can be assessed on this transfer. *In re Spencer*, 119 N. Y. App. Div. 883, 107 N. Y. Suppl. 543, affirming 91 Hun 141.

The testator died in 1892, leaving a share of his estate in trust to another for life, and remainder on his death to his lawful issue,

unless otherwise directed by the will of the life tenant. The life tenant died exercising the power of appointment, and the court holds that where the exercise of the power was to four of the beneficiaries as named in the original will then no tax should be levied on these four, as they took under the original will of the testator; and that a temporary payment made to the tax commissioner by the trustees could be recovered back in part so as to leave only the portion due. *People v. Williams*, 127 N. Y. Supl. 749.

### **Election to Take under Original Will Rather than under Appointment.**

Where a will creates a power of appointment to such issue of the life tenant as she may by will appoint, and in case of failure to appoint then to such issue absolutely, and she by will exercises the power, the issue have a right to elect to take under the original will instead of under the exercise of the power of appointment. *In re Lewis*, 194 N. Y. 550, affirming 129 N. Y. App. Div. 905, reversing 60 Misc. 643, on authority of *In re Lansing*, 182 N. Y. 238, and *In re Haggerty*, 194 N. Y. 550.

Where the donee of the power of appointment exercises that power as provided by appointing to those to whom the property would go under the will, on failure to exercise the power no transfer tax should be collected on the exercise of the power, and an election to take under the original will rather than under the power need not be in any particular form and it is sufficient if it appears by opposition to the imposition of a transfer tax. *In re Chapman*, 133 N. Y. App. Div. 337, 117 N. Y. Supl. 679, affirming 61 Misc. 593, 115 N. Y. Supl. 981.

The testator died in 1875, leaving a will which created a power of appointment and in default of such appointment then over to his daughters. The life tenant exercised the power in favor of the daughter, who prior to the execution of that power had a vested remainder in the property. The daughter renounced her rights under the execution of the power and claimed under the original will, and the court holds that her interest is not subject to the inheritance tax. *In re Haggerty*, 194 N. Y. 550, 87 N. E. 1120, affirming 128 N. Y. App. Div. 479, 112 N. Y. Supl. 1017.

### **Property Subject to a Power.**

A will gave a certain estate in trust to pay the income to the wife for life, the remainder to the nephew; but the codicil gave

the wife power to appoint a portion of the estate given to the nephew. From the interest of the nephew should be deducted the value of the property over which the wife had the power of appointment. *In re Field*, 36 Misc. Rep. 279, 73 N. Y. Suppl. 512.

### **Vested Remainders.**

Where the testator died in 1880, leaving real estate in trust to pay the income to his son for life, and upon his death the property shall vest absolutely in his children, as he may by will appoint; and where the son by will appoints for life with vested remainders over, these vested remainders are subject to taxation under the New York statute of 1897. They are alienable, devisable and descendible; therefore, they do not fall within the exception of the statute and are subject to present taxation. *In re Dows*, 167 N. Y. 227, 233, 60 N. E. 439, 52 L. R. A. 433, 88 Am. St. Rep. 508, affirming 60 N. Y. App. Div. 630 (affirmed *sub nomine*, *Orr v. Gilman*, 183 U. S. 278; 22 S. Ct. 213, 46 L. Ed. 196).

### **Where Donee has Absolute Estate.**

Where the testator gave property to his wife to be disposed of as she might think proper without any remainder or trust being created, this was an absolute estate to the wife and therefore on her death without exercising her power there was no reason for levying a tax on the heirs of the original testator. *In re Lynn*, 34 Misc. 681, 70 N. Y. Suppl. 730.

### **Direction to Pay Loan.**

Where the donee of the power of appointment in her will gave a direction to repay a loan heretofore made to her out of the fund over which she exercised her power, this is a transfer to the creditor and was taxable under the statute of 1897. *In re Rogers*, 172 N. Y. 617, 64 N. E. 1125, affirming 71 N. Y. App. Div. 461, 75 N. Y. Suppl. 835.

### **When Interests Depend on Power.**

Where under an original will and in default of the exercise of the power the children will take an immediate and equal division of the estate and under the power the property is given to a life tenant for life and then to three of the four children named in the original will, the children named must make title under the exercise of the power of appointment and this is therefore subject to the inheritance tax. *In re Warren*, 62 Misc. 444, 116 N. Y. Suppl. 1034.

The testator by will provided that her estate should pass to trustees for her children for life and on the death of either of them as they might by will appoint and in default of a will then to the issue. The daughter bequeathed to her husband for life and upon his death to her two children and the court says that as the power of appointment was exercised by the life tenant and as it was only in case of a failure to exercise the power that the remainder vested in the children of the donee, they derived their title to the property through the exercise of the power of appointment and not directly under the will of the testator. *In re Lowndes*, 60 Misc. 506, 113 N. Y. Suppl. 1114.

### **Failure to Exercise Power.**

The testatrix died in 1883 leaving the residue of her estate to her husband with the right of use and enjoyment during his life, and giving him the right to dispose of the same on his death by will, and that so much as might remain undisposed of at his death should pass to two legatees named. The husband died in 1894, leaving a will which directed his executors to distribute his wife's estate "according to the provisions of her last will and testament." The court finds that this was a refusal or renunciation of the power; that the legatees who took on the death of the husband therefore took under the will of the wife and as she died before the inheritance tax in 1885, no tax was collectible on the estate. *In re Langdon*, 153 N. Y. 6, 9, 46 N. E. 1034, affirming 11 N. Y. App. Div. 220, 43 N. Y. Suppl. 419.

### **Statute Ineffective over Interests in Default of Exercise of Power.**

The provision that the failure or omission to exercise the power of appointment subjects the property to a transfer tax in the same manner as if the donee of the power had owned the property and devised it by will is ineffective, as where there is no transfer there can be no tax; and a transfer made before the passage of the act relating to transfers is not affected by it.

If it be assumed that a remainder interest in default of the execution of a power is contingent, nevertheless it is acquired under the will of the testator and cannot be subject to tax when the testator died before the imposition of a transfer tax. It then became a property right in the remainderman which was just as sacred and just as immune from any legislative attack as any other property right;

and where the power of appointment is not exercised no tax can be laid upon it. *In re Lansing*, 182 N. Y. 238, 248, 74 N. E. 882, modifying 103 N. Y. App. Div. 596.

**No Defence that Tax Paid under Original Bequest Creating Power.**

The testator died in December, 1887, leaving a life estate with a power of appointment in the life tenant. The life tenant died in 1904 after exercising the power, and the court holds that, although all property was made subject to the tax under the will of the original testator, still the exercise of the power of appointment is taxable under the statute of 1897. The court holds that the fact that the tax was erroneously assessed in 1888 on the whole interest instead of merely on the life interest does not prevent the collection of the tax on the exercise of the power of appointment. *In re Buckingham*, 106 N. Y. App. Div. 13, 94 N. Y. Suppl. 130.

**S. 221.** [As amended by St. 1911, c. 732, in effect July 21, 1911.] **Exceptions and limitations.** Any property devised or bequeathed for religious ceremonies, observances or commemorative services of or for the deceased donor, or to any person who is a bishop or to any religious, educational, charitable, missionary, benevolent, hospital or infirmary corporation, wherever incorporated, including corporations organized exclusively for Bible or tract purpose shall be exempted from and not subject to the provisions of this article. There shall also be exempted from and not subject to the provisions of this article personal property other than money or securities bequeathed to a corporation or association wherever incorporated or located, organized exclusively for the moral or mental improvement of men or women or for scientific, literary, library, patriotic, cemetery or historical purposes or for the enforcement of laws relating to children or animals or for two or more of such purposes and used exclusively for carrying out one or more of such purposes. But no such corporation or association shall be entitled to such exemption if any officer, member or employee thereof shall receive or may be lawfully entitled to receive any pecuniary profit from the operations thereof except reasonable compensation for services in effecting one or more of such purposes or as proper beneficiaries of its strictly charitable purposes; or if the organization thereof for any such avowed purpose be a guise or pretense for directly or indirectly making any other pecuniary profit for such corporation or association or for any of its members or employees or if it be not in good faith organized or conducted exclusively for one or more of such purposes.

[See notes to the Act of 1885, c. 483, s. 1; 1887, c. 713; 1891, c. 215; 1892, c. 169; 1892, c. 399, s. 2; 1896, c. 908, s. 221; 1898, c. 88; 1900, c. 723; 1901, c. 458; 1903, c. 41; 1905, c. 368; 1907, c. 204; 1908, c. 310; 1909, c. 62, s. 221; 1910, c. 600; 1910, c. 706; 1911, c. 732]

### Care of Cemetery Lot.

A bequest to a cemetery association of a thousand dollars, the interest to be used for perpetual care of the testator's lot, is not part of the funeral expenses. There is a distinction between expenditures for a burial lot made by an executor in his discretion and a bequest made by a decedent in his last will to a certain beneficiary and for a certain specific purpose; and as cemetery associations are not specifically mentioned as being exempt, the transfer is subject to tax. *In re Fay*, 62 Misc. 154, 116 N. Y. Suppl. 423.

### Monument.

A monument is part of the funeral expenses. *In re Edgerton*, 158 N. Y. 671, 52 N. E. 1124, affirming 35 N. Y. App. Div. 125, 54 N. Y. Suppl. 700.

### Municipal Corporations.

Under the New York statute of 1896 there was a material change in the exemption law as to the property of public corporations. The statute renders all property in the state taxable unless exempt from taxation by law and in the next section specifies property of a municipal corporation as exempt. Therefore a bequest to a municipal corporation for a public library is exempt from the transfer tax under the New York statute of 1896. *In re Thrall*, 157 N. Y. 46, 51 N. E. 411.

### The United States.

It is urged that the United States if regarded as a corporation is a corporation exempt from taxation under the transfer tax, but the exemptions in the statute apply only to domestic corporations, and the United States is not a domestic corporation so far as the state of New York is concerned. *In re Merriam*, 141 N. Y. 479, 484, 36 N. E. 505, affirmed in *United States v. Perkins*, 163 U. S. 625.

"This tax, in effect, limits the power of testamentary disposition and legatees and devisees take their bequests and devises subject to this tax imposed upon the succession of property. This view eliminates from the case the point urged by the appellant that to collect this tax would be in violation of the well-established rule that the state cannot tax the property of the United States. Assuming this legacy vested in the United States at the moment of testator's death, yet in contemplation of law the tax was fixed on the succession at the same instant of time. This is not a tax imposed

by the state on the property of the United States. The property that vests in the United States under this will is the net amount of its legacy after the succession tax is paid." *Per* Bartlett, J., in *In re Merriam*, 141 N. Y. 479, 484, 36 N. E. 505, affirmed in *United States v. Perkins*, 163 U. S. 625.

"The legislation taxing legacies is not directed against the United States nor against the legatees nor devisees who receive the benefit. It operates against the person making the will because it limits his power of testamentary disposition and it is well settled that it is exclusively within the jurisdiction of the state to legislate upon and regulate the general rights, duties and liabilities of its citizens." *In re Murphy*, 4 Misc. Rep. 230, 25 N. Y. Suppl. 107.

The testator died February 28, 1892, leaving a bequest to the government of the United States on certain conditions and the court holds that as the tax is upon the right of succession and not upon property, and that this bequest is subject to the New York inheritance tax. *In re Cullum*, 5 Misc. Rep. 173, 25 N. Y. Suppl. 699.

#### **Fund in Hands of Court.**

The court reverses the order of the surrogate to the effect that where a devise in trust for the purpose of founding a home for the aged was made, the trust to last during two lives only, that the fund after the end of the trust was in the hands of the supreme court and therefore exempt from taxation. The appellate division remarks that the fund is not a gift to the state and does not become the property of the state; that the omission of the testator to supply a trustee after the two lives is supplied by the legislative intervention, but that does not alter the character of the gift, nor give any control over it for any purpose beyond that outlined by the will. Furthermore, a gift to a municipality or to the United States is chargeable with the deduction for the succession tax as either takes the bequest subject to the same burden as an individual. *Knight v. Stevens*, 72 N. Y. Suppl. 815, reversing *In re Graves*, 70 N. Y. Suppl. 727.

#### **Government Bonds.**

See notes to the Acts of 1885, 1892 and 1897, *ante*, pp. 778, 815, 821.

The tax imposed by the act of 1896 is a tax on the right of succession and not on property; and therefore it is immaterial that the trust fund passing by will is invested in bonds of the state of New York or incorporated companies liable to taxation on their

own capital. *In re Dows*, 167 N. Y. 227, 230, 60 N. E. 439, 52 L. R. A. 433, 88 Am. St. Rep. 508, affirming 60 N. Y. App. Div. 630 (affirmed *sub nomine*, *Orr v. Gilman*, 183 U. S. 278, 22 S. Ct. 213, 46 L. Ed. 196).

Government bonds are not considered in arriving at the value of the property which measures the taxable inheritance as the language of the transfer act itself defines the words "estate" and "property" to mean property passing from the testator over which the state has jurisdiction for the purposes of taxation.

Government bonds, however, are equally responsible for debts and expenses of administration with other property, and there is therefore no reason for not requiring the government bonds to bear their proportion of the debts and the expenses. The appraiser in finding the amount of property subject to tax should deduct only that proportion of the value of the bonds after deducting a proportional share of the debts and expenses. *In re Purdy*, 24 Misc. Rep. 301, 53 N. Y. Suppl. 735, 2 Gibbons 527.

#### **"For Religious Ceremonies." — Masses.**

Bequests for masses are now exempt from taxation by a clause introduced in St. 1910, c. 600, and continued in St. 1911, c. 732, s. 221.

The following cases before the statutory exemption are of interest.

The testator left a legacy of five hundred dollars to the executors in trust, to be used for masses for the repose of the soul of the testatrix. The testatrix and her husband had expressed her desire that such masses be celebrated by a certain priest named. It was claimed that this was part of the funeral expenses, but the court holds that this is a distinct legacy and cannot be considered as part of the funeral expenses. The court finds the bequest to be valid. That the beneficiary has designated as a wish on the part of the testatrix to have a particular priest celebrate the masses is equivalent to a direction and therefore the bequest is subject to the inheritance tax. *In re Black*, 24 N. Y. St. 341, 5 N. Y. Suppl. 452, 1 Con. Surr. 477.

The will bequeathed to a priest, or in the event of his death to his successors, the sum of \$800 to be used in saying eight hundred low masses, two hundred for each of four different persons. This bequest is not specially exempted and is not a provision for funeral expenses, and the low mass in no sense is a part of the funeral service even so far as such masses were said for the testator. *In re McAvoy*, 112 N. Y. App. Div. 377, 98 N. Y. Suppl. 437.



The testatrix left two legacies to churches for masses to be read for the repose of her soul. It was claimed that the bequests were taxable as under the rules of the Roman Catholic Church all bequests for masses go to the priest individually who says the masses and do not go to the church as a religious or charitable body. This statement was contradicted. The court holds that as the legacies are bequeathed directly to religious bodies and as the provision for masses is merely collateral and incidental they are therefore exempt under section 221. *In re Didion*, 54 Misc. 201, 105 N. Y. Suppl. 924.

### **For Religious Use.**

The testator bequeathed certain sums to be expended from time to time for masses for the repose of her soul, and also for the repose of the souls of her deceased parents, in the discretion of the executors. The court holds that a gift for the saying of masses for the repose of the dead is a gift for religious use, and that therefore, under the statute of 1893, chapter 701, there is a gift to the executors for a religious use upon a valid trust, and the transfer should be taxed at the rate of five per cent. *In re Eppig*, 63 Misc. 613, 118 N. Y. Suppl. 683.

### **To Bishop.**

This exemption covers a bequest made to an archbishop or cardinal archbishop in his official capacity, as they are all bishops as well as the religious and temporal heads of their church. The clear intent and object of the law was to exempt the property held by religious corporations, whether held in the name of the corporation itself or in the name of one of the religious heads of the church or denomination. *In re Kelly*, 29 Misc. Rep. 169, 60 N. Y. Suppl. 1005.

### **"TO ANY RELIGIOUS, EDUCATIONAL, CHARITABLE, ETC., . . . CORPORATION."**

### **Whether Retrospective.**

The statute of 1900, chapter 382, rendered legacies to charitable corporations subject to the transfer tax, but legacies to such corporations are only taxable where the testators have died after the passage of that act. *In re Vanderbilt*, 68 N. Y. App. Div. 27, 74 N. Y. Suppl. 450 (reversed on other points in 172 N. Y. 69), citing *In re Huntington*, 168 N. Y. 399, 61 N. E. 643.

New York statute of 1892, chapter 169, gave an exemption to gifts to a bishop or religious societies. The court holds that this exemption applies, whether the devise had become operative prior to the operation of the act or subsequent thereto, and therefore applied to a devise made by a testator who died in 1885, where the tax had not been collected. *Roman Catholic Church v. Niles*, 86 Hun 221, 33 N. Y. Suppl. 243.

### **Construction of Exemption Statutes.**

Statutes of exemption from taxation must be strictly construed against the state where a tax imposed is not a common burden but a special tax reaching only special cases. The rule is that to subject such a class of persons requires a clear legislative intention. *In re Mergentime*, 195 N. Y. 572, 88 N. E. 1125, affirming 129 N. Y. App. Div. 367, 113 N. Y. Suppl. 948.

### **Test of Exemption of Corporation.**

The status of a corporation as to the inheritance tax should be decided entirely by its charter and the law governing it, and evidence to show what business it actually does is inadmissible. *In re White*, 118 N. Y. App. Div. 869, 103 N. Y. Suppl. 688. See, however, *Matter of Mergentime*, 129 N. Y. App. Div. 367, 113 N. Y. Suppl. 948, as to the test since the amendment of 1905.

### **In Trust for Exempt Society.**

Where the testator makes a direct bequest in absolute form and where it appears that a valid parole trust was created enforceable in equity in favor of certain religious corporations which were of a class exempt under the statute, the bequest itself is exempt from taxation. *In re Murphy*, 4 Misc. Rep. 230, 25 N. Y. Suppl. 107.

### **Failure to Claim Exemption.**

A charitable legatee which was exempt from tax and was notified of the proceedings for appraisal, but which failed to claim an exemption before the appraiser, to which no notice of assessment of tax on its legacy was given, filed a petition more than sixty days after the entry of the decree taxing its legacy, that the decree be opened and modified. The court holds that notice should have been given of the entry of the decree; that the petition is not an appeal but is properly an application to the court to open and modify its decree, which the surrogate court has discretion to do. *In re Rep. Daly*, 34 Misc. Rep. 148, 69 N. Y. Suppl. 494.

**Corporation to be Created.**

Where a non-resident left an interest in an estate to a corporation to be created and no such corporation has ever been created, no tax can be levied upon the gift. *In re Chesebrough*, 34 Misc. Rep. 365, 69 N. Y. Suppl. 848.

The testator died July 21, 1896, and under the act of 1896, s. 220, the court holds that a corporation to be organized under the testator's will for a home for the aged should be free of taxation. *In re Graves*, 171 N. Y. 40, 63 N. E. 787, reversing 66 N. Y. App. Div. 267, 72, N. Y. Suppl. 815, 34 Misc. 677, 70 N. Y. Suppl. 727.

**Incorporation in Several States.**

Where one charitable corporation has only a single entity but is incorporated in three states theoretically it must be said that there is a distinct entity in each of three states, but the substance is the same in all. It has a single body possessing the franchises and privileges of a domestic corporation in three states. To say that the bequest is to a foreign corporation merely because the testatrix named the place where its principal office is located as Boston, Massachusetts, is to substitute form for substance. *In re Lyon*, 141 N. Y. App. Div. 34, 128 N. Y. Suppl. 1004.

**Particular Societies.***Almshouse. — Entrance Fee.*

A certain home for aged men is free of taxation as an almshouse where its charter provides that its object is the support of men who are unable to support themselves, although one of the by-laws of the organization provides an entrance fee to all those who are admitted. *In re Vassar*, 127 N. Y. 1, 14, 27 N. E. 394, reversing 58 Hun 378, 12 N. Y. Suppl. 203.

Institutions to be exempt as an almshouse must be absolutely free and all benefits must be given gratuitously. *In re Vanderbilt*, 10 N. Y. Suppl. 239, 2 Con. Surr. 319.

An institution for the blind which does not receive pay from patients under any circumstances is exempt as an almshouse. *In re Underhill*, 20 N. Y. Suppl. 134, 2 Con. Surr. 262.

A home for aged women which charges board is not an almshouse and is therefore subject to the tax. *In re Lenox*, 9 N. Y. Suppl. 895.

The Baptist Home Society of New York requires a payment of an admission fee of a thousand dollars and that all those who enter shall make a will in its favor; and it is therefore not an almshouse

and so is not exempt under the New York statute. *In re Keech*, 57 Hun 588, 11 N. Y. Suppl. 265.

### *Charity.*

The New York Association for Improving the Condition of the Poor which is a pure charity making no charge whatever is exempt from taxation. *In re Lenox*, 9 N. Y. Suppl. 895.

### *Homes.*

Under the statute of 1905, chapter 368, section 221, a home for friendless children is exempt from the inheritance tax. *In re Higgins*, 55 Misc. 175, 106 N. Y. Suppl. 465.

### *Hospitals.*

Hospital corporations are expressly exempted by the present act. Under New York statute of 1896, chapter 908, section 220, imposing a tax on transfers to the persons or corporations not exempt by law from taxation, the Buffalo General Hospital is exempt from taxation as it is made exempt by general law. The mere fact that religious corporations are referred to in the statute of 1896, chapter 908, section 4, subdivision 7, does not confine the exemption to religious corporations. *In re Kimberly*, 27 N. Y. App. Div. 470, 50 N. Y. Suppl. 586.

The St. John's Riverside Hospital is a charitable institution whose object is the maintenance and support of a hospital for indigent patients and as such is an almshouse and so exempt under New York law from the inheritance tax. *In re Curtis*, 25 N. Y. St. 1028, 7 N. Y. Suppl. 207, 1 Con. Surr. 471.

Under the statute of 1905, chapter 368, section 221, a bequest to a corporation organized to carry on a general city hospital is exempt from taxation. *In re Higgins*, 55 Misc. 175, 106 N. Y. Suppl. 465.

The Craig Colony for Epileptics organized to treat a class of unfortunates is charitable and therefore exempt from taxation. *In re Moore*, 66 Misc. 116, 122 N. Y. Suppl. 828.

### *Libraries.*

A bequest of money to a memorial library association is subject to the transfer tax under N. Y. St. 1896, c. 221, as amended by N. Y. St. 1905, c. 368. N. Y. St. 1896, s. 220, as amended by N. Y. St. 1903, c. 41, gave a limited exemption of certain personal property passing to educational, library or certain other corporations. The

statute of 1905 transferred to the exempt class educational corporations but retained in the limited exempt class library corporations, and therefore they cannot be held to be entirely free from the tax although a library association is educational. *In re Francis*, 189 N. Y. 554, 82 N. E. 1126, affirming 121 N. Y. App. Div. 129, 105 N. Y. Suppl. 643.

Under the statute of 1905, chapter 368, section 221, a public library corporation is exempt from the transfer tax. *In re Higgins*, 55 Misc. 175, 106 N. Y. Suppl. 465.

### *Missionary Societies.*

Under the present act a missionary society is exempt.

The Board of Foreign Missions of the Presbyterian Church was subject to taxation. *In re Board of Foreign Missions*, 58 Hun 116, 33 N. Y. St. 789, 11 N. Y. Suppl. 310.

The missionary society of the Methodist Episcopal Church is not a religious corporation and a legacy to it is subject to tax, where the testator died after St. 1900, c. 382. *In re Watson*, 171 N. Y. 256, 63 N. E. 1109, reversing 70 N. Y. App. Div. 623, 36 Misc. Rep. 504, 73 N. Y. Suppl. 1058, 171 N. Y. 256.

A mission corporation organized for general mission purposes is not a religious corporation and is not exempt from taxation. *In re White*, 118 N. Y. App. Div. 869, 103 N. Y. Suppl. 688.

### *Museums.*

The New York Art Museum is exempt under the New York statute of 1905, c. 368, as an educational corporation. *In re Mergentime*, 195 N. Y. 572, 88 N. E. 1125, affirming 129 N. Y. App. Div. 367, 113 N. Y. Suppl. 948.

This museum had been held subject to tax under the statute of 1885. See *ante*.

### *Prevention of Cruelty.*

Societies for the prevention of cruelty may well be exempt as "benevolent" under the present act.

The Society for the Prevention of Cruelty to Children is not within the wholly exempt class as this is a corporation within the partially exempt class "organized for the enforcement of laws relating to children." *In re Moses*, 123 N. Y. Suppl. 443, modifying and affirming 60 Misc. 637, 113 N. Y. Suppl. 930.

The American Society for the Prevention of Cruelty to Animals is not a charitable corporation, as its work is confined to animals and not to human beings. As it is not expressly exempted from taxation by its charter a legacy to it is subject to the New York inheritance tax. *In re Keith*, 5 N. Y. Suppl. 201, 1 Con. Surr. 370.

*Publication Societies.*

The American Baptist Publication Society organized for the purpose of promoting evangelical religion by means of the Bible, printing press, colportage, Sunday schools and other appropriate ways is not a "charitable" corporation, as a person or corporation seeking to advance the cause of religion only cannot be said to be engaged in a charitable work in the ordinary sense in which that term is used. *In re McCormick*, 127 N. Y. Suppl. 493. (The society might, however, be benevolent under the present act.—*Ed.*)

*Temperance.*

The Woman's Christian Temperance Union falls within the class of benevolent educational charitable corporations intended to be exempt. *In re Moore*, 66 Misc. 116, 122 N. Y. Suppl. 828.

*Young Men's Christian Association.*

Under the present act a Young Men's Christian Association might well be exempt as "benevolent" or "educational." The Young Men's Christian Association is not a religious corporation and hence a legacy to it is subject to tax under St. 1900, c. 382. *In re Watson*, 171 N. Y. 256, 63 N. E. 1109, reversing 70 N. Y. App. Div. 623, 36 Misc. 504, 73 N. Y. Suppl. 1058.

The Young Men's Christian Association and the Young Women's Christian Association are "educational," and therefore not subject to tax under section 221 of the tax law. *In re Moses*, 123 N. Y. Suppl. 443, modifying and affirming 60 Misc. 637, 113 N. Y. Suppl. 930. See, however, *In re Fay*, 37 Misc. Rep. 532, 76 N. Y. Suppl. 62; *Young Men's Christian Association v. New York*, 113 N. Y. 187, 21 N. E. 86.

**S. 221 a.** [As added by St. 1911, c. 732, in effect July 21, 1911] **Rates of tax.**

1. Upon a transfer taxable under this article of property or any beneficial interest therein, of an amount in excess of the value of five thousand dollars to any father, mother, husband, wife, child, brother, sister, wife or widow of a son, or the husband of a daughter, or any child or children adopted as such in conformity with the laws of this state, of the decedent, grantor, donor or vendor, or to any child to whom any such decedent, grantor, donor or vendor for not less than ten

years prior to such transfer stood in the mutually acknowledged relation of a parent, provided, however, such relationship began at or before the child's fifteenth birthday and was continuous for said ten years thereafter, or to any lineal descendant of such decedent, grantor, donor or vendor born in lawful wedlock, the tax on such transfer shall be at the rate of

One per centum on any amount in excess of five thousand dollars up to the sum of fifty thousand dollars.

Two per centum on any amount in excess of fifty thousand dollars up to the sum of two hundred and fifty thousand dollars.

Three per centum on any amount in excess of two hundred and fifty thousand dollars up to the sum of one million dollars.

Four per centum on any amount in excess of one million dollars.

2. Upon a transfer taxable under this article of property or any beneficial interest therein of an amount in excess of the value of one thousand dollars to any person or corporation other than those enumerated in paragraph one of this section, the tax shall be at the rate of

Five per centum on any amount in excess of one thousand dollars up to the sum of fifty thousand dollars.

Six per centum on any amount in excess of fifty thousand dollars up to the sum of two hundred and fifty thousand dollars.

Seven per centum on any amount in excess of two hundred and fifty thousand dollars up to the sum of one million dollars.

Eight per centum on any amount in excess of one million dollars.

This section was formerly a part of St. 1896, c. 908, s. 221, and was divided from that section by St. 1911, c. 732. See notes to section 221, *ante*, p. 894. The graduated feature was first introduced by St. 1901, c. 706, and the rates were materially reduced by St. 1911, c. 732. As to the construction of the graduated tax see notes to the act of 1910, c. 706, *ante*, p. 831.

### **Where No Next of Kin Appear.**

The decedent died in New York a native of Sweden, and inquiry failed to disclose his family or next of kin. The court holds that on his death his personal property vested in a public administrator who was appointed, and his next of kin were entitled to the property upon proving their relationship. No such person has appeared and no such person has been found to be in existence. There is the presumption, however, that he left next of kin, but there is no presumption that he left a widow or descendants. It is presumed, therefore, that the property vested in the next of kin of the deceased and is therefore taxable under section 220 of the tax law, and as it does not appear that it is exempt under section 221 of the tax law the tax imposed by sub-division 6 of section 220 applies, and it is taxable at the rate of five per cent.

*In re Lind*, 132 N. Y. App. Div. 321, 117 N. Y. Suppl. 49, reversing

### **Assignment by Legatee.**

Where the legatee assigns his legacy and the assignee does not take from the testator for he did not give it to him, the assignee took as assignee and not as legatee. Unless she took as assignee she did not take at all. The legatees assigned to her and the rate of taxation is fixed by their relation to the testator. As she did not take through the will a succession tax cannot be fixed at the rate as in the case of a bequest to the assignee but must be fixed at the rate as in the case of a bequest to the original legatee. *In re Cook*, 187 N. Y. 253, 259, 79 N. E. 991, reversing 114 N. Y. App. Div. 718, 99 N. Y. Suppl. 1049.

### **Renunciation by Legatee.**

The court finds that where a legacy is renounced by the legatee that the tax should be at the rate at which a gift to the original residuary legatees would have been imposed. *In re Wolfe*, 179 N. Y. 599, 72 N. E. 1152, affirming 89 N. Y. App. Div. 349, 85 N. Y. Suppl. 949.

### **Where One was Both Stepson and Nephew.**

The will of one who died October 13, 1907, provided that her property should go to "relatives of my full blood only who would be entitled to receive my personal estate in case of my death unmarried and intestate." The contestant was the son of a deceased sister of the testatrix. After the death of his mother his father and the testatrix had intermarried and the question was whether he took as a nephew or a stepson.

The court holds that if he had been included by name there would be no doubt that he would be taxable as a stepchild. As a stepchild he could not take under the statute and the will expressly provides that the property shall go to the relatives of full blood only, and therefore the respondent takes as a nephew as one of the class as though he took under the statute of distribution.

The court says the transfer to the respondent was not made because of his relationship as a stepson but as a nephew and for the purposes of this case he must be treated solely as a nephew. *In re Linkletter*, 134 N. Y. App. Div. 309, 118 N. Y. Suppl. 878.



**"IN EXCESS OF THE VALUE OF FIVE THOUSAND DOLLARS."****Value of Estate the Test under the Act of 1896.**

The following decisions were rendered under the act of 1896. It seems that under the act of 1911 exemptions should be reckoned by the value of each inheritance rather than the estate as a whole. The minimum amounts of five hundred dollars and \$10,000 under the act of 1896 are reckoned by the amount of the whole estate and not by the value of each share.

Where the estate of the intestate was valued at eleven thousand dollars to be divided into thirds, the court holds that under the act of 1896 a tax of five per cent should be imposed upon the share of each niece and a tax of one per cent upon the shares of the brother and sister; and the tax was challenged on the ground that the aggregate amount to which the brother and sister are entitled is less than ten thousand dollars. It was contended that one per cent could be imposed upon a sum passing to brothers and sisters in the event only that the total amount passing to them as a class is equal to the sum of ten thousand dollars however large the estate may be. The court, however, follows the construction given to N. Y. St. 1892, c. 399, ss. 2 and 22, in *In re Hoffman*, 143 N. Y. 327. The court remarks that the statute of 1896 is a re-enactment of the act of 1892, section 2 becoming section 21 of the latter act, and section 22 becoming section 242. *In re Corbett*, 171 N. Y. 516, 64 N. E. 209, affirming 55 N. Y. App. Div. 124.

It is well settled that all legacies whether they are in excess of five hundred (\$500) dollars or not are taxable if the entire personal estate exceeds the sum of ten thousand (\$10,000) dollars. *In re Curtis*, 31 Misc. Rep. 83, 64 N. Y. Suppl. 574.

As the aggregate of all personal property passing to the legatees by will exceeds ten thousand (\$10,000) dollars, it is subject to the tax, although the value of the individual legacies is less than ten thousand (\$10,000) dollars. *In re Birdsall*, 22 Misc. Rep. 180, 49 N. Y. Suppl. 450, 2 Gibbons 293, following *In re Hoffman*, 143 N. Y. 327, 38 N. E. 311.

Where the amount of the estate is \$663, of which \$372 passes to sisters of the decedent and \$291 to a nephew as the property passing from the decedent to taxable persons exceeded \$500 in value, the transfer to the nephew must be taxed. *In re Rosendahl*, 40 Misc. Rep. 542, 82 N. Y. Suppl. 992. The court remarks that

the cases of *In re Bliss*, 6 N. Y. App. Div. 192, 39 N. Y. Suppl. 875, and *In re Conklin*, 39 Misc. Rep. 771, 80 N. Y. Suppl. 1124, have been reversed in *In re Corbett*, 171 N. Y. 516, 64 N. E. 209, affirming 55 N. Y. App. Div. 124, 67 N. Y. Suppl. 46.

The testator died intestate October 25, 1903, leaving as his next of kin one sister, two brothers and five nephews and a niece. The whole estate was of the value of \$10,122, of which one-fourth was distributed to each of the brothers and sister and one-fourth to the nephews and niece. The question was whether any tax was due on the shares going to the brothers and sister. The *Corbett* case, 171 N. Y. 516, 64 N. E. 209, affirming 55 N. Y. App. Div. 124, 67 N. Y. Suppl. 46, would have been conclusive of this question, but section 221 of the tax law was amended by the statute of 1903, chapter 41.

The court, however, holds that there is the same necessity for resorting to the statutory definition of property given in section 242 now as there was before the amendment of 1903, and that the only effect of the amendment is that in estimating the value of the property passing, real estate as well as personal property is to be now included, and that property in section 221 is still to be construed as it is defined in section 242. *In re Fisher*, 96 N. Y. App. Div. 133, 89 N. Y. Suppl. 102.

Under the statute of 1895, sections 220, 221 and 242, a legacy was given to an uncle of \$337, and other property of \$500 to the widow, and the court holds that the legacy to the uncle although less than \$500 considered in connection with the legacy to the widow is worth more than \$500; and as the widow is not exempt from the operation of the law the legacy to the uncle is subject to the tax. *In re Garland*, 88 N. Y. App. Div. 380, 84 N. Y. Suppl. 630, reversing 40 Misc. 579, 82 N. Y. Suppl. 989.

Where the testator died July 11, 1896, it was claimed that as each of the legatees received less than \$10,000 and were lineal descendants their succession was not taxable. The court notes, however, that *In re Skillman*, 10 Misc. Rep. 642, 32 N. Y. Suppl. 780, is not authority, as it is in conflict with the doctrine laid down in *In re Hoffman*, 143 N. Y. 327, 38 N. E. 311. *In re De Graaf*, 24 Misc. 147, 53 N. Y. Suppl. 591, 2 Gibbons 516. The following cases to the contrary have been overruled. *In re Conklin*, 39 Misc. Rep. 771, 80 N. Y. Suppl. 1124; *In re Bliss*, 6 N. Y. App. Div. 192, 39 N. Y. Suppl. 875.

**Discount for Delay in Payment.**

Bequests of five hundred dollars each to several charitable institutions are exempt, as they are payable at the end of a year from the date of the appointment of the executors, and the cash value therefore is less than five hundred dollars. *In re Underhill*, 20 N. Y. Suppl. 134, 2 Con. Surr. 292, following *In re Peck*, 9 N. Y. Suppl. 465, 24 Abb. N. Cas. 365, 2 Con. Surr. 201. Compare *In re De Graaf*, 24 Misc. 147, 53 N. Y. Suppl. 591, 2 Gibbons 516.

**Real Estate Considered.**

The testator gave his sister personal property worth more than \$10,000 and real estate to the value of \$6,500, and died in 1904. In section 221 the words "real or personal property" are to be construed as in section 220, and therefore the total of the property both real and personal should be considered in fixing the exemption. Therefore the tax on the value of the real estate should be collected in this case. *In re Hallock*, 42 Misc. Rep. 473, 87 N. Y. Suppl. 255.

**Power of Appointment.**

The testator died in 1883, leaving a will applying property for the use of his brother's widow for life, and on her death giving her a power of disposal. She died in 1899, exercising the power of appointment in favor of her son; and the court holds that under the statute of 1897, chapter 284, section 220, of the tax act the fund must be regarded for taxing purposes as having passed from the mother to the son, the power of appointment being in itself a transfer and the case is governed by section 221 and not by section 220. It is therefore not subject to tax unless the transfer is of the value of ten thousand (\$10,000) dollars or more. *In re Seaver*, 63 N. Y. App. Div. 283, 71 N. Y. Suppl. 544.

**Tax on Entire Legacy if Any Taxable.**

The decedent died August 6, 1910, a resident of New York, leaving legacies to various children. The court holds that a legacy to a child of \$700 is taxable at one per cent on the entire legacy and not on the amount which exceeds \$500 under section 220, subdivision 1 and 7 and section 221. *In re Mason*, 69 Misc. 280, 126 N. Y. Suppl. 998.

**"HUSBAND OF A DAUGHTER."**

This exemption applies to the widow, where the daughter has died, and this even although the widower has married again before

the death of the testator. *In re Ray*, 13 Misc. Rep. 480, 35 N. Y. Suppl. 481.

**"CHILD . . . ADOPTED AS SUCH."**

The adoption does not need to be under the laws of New York. A child legally adopted under the laws of Massachusetts, who is taken into the testator's family at the age of two, is treated as a son and stayed in the family for eleven years, until the testator's death, is in the mutually acknowledged relation of a parent.

The court says that experience teaches us that children of three years recognize their parents and the court finds no difficulty in concluding that the appellant recognized the testator as his father and that the testator recognized him as an adopted son for more than ten years. *In re Butler*, 58 Hun 400, 34 N. Y. St. 189, 12 N. Y. Suppl. 201.

"This boy was legally adopted, under laws substantially similar to our own, so far as the mode of procedure is concerned, and that is sufficient to answer the requirements of this law. Moreover, the deceased stood in the mutually acknowledged relation of a parent to this appellant for eleven years and a half prior to his death. No evidence of adoption is required by this portion of the statute but mutual acknowledgment, and that is proven in this case by all the facts and circumstances which cluster round these parties from the commencement of their relation to the death of the testator. The appellant, from his earliest recollection, believed the testator to be his father, recognized him as such, and knew no other, and the testator took him to his home as a child and treated him in all respects as a son. Their relations were parental, and their entire conduct was a mutual acknowledgment of their relation. The child was taken in helpless infancy, with no expectation of compensation for services. He was treated as a son, and was obedient to his foster father, and dependent upon him, and the statute requires no higher proof of mutual acknowledgment. The word 'mutual' in this statute has no abstruse signification. It means and required 'reciprocity of action,' 'co-relation,' and 'interdependence,' and finds its best illustration and application in the relation existing between parents and children, which are always mutual." *Per Dykman, J.*, in *In re Butler*, 58 Hun 400, 34 N. Y. St. 189, 12 N. Y. Suppl. 201.

**"MUTUALLY ACKNOWLEDGED RELATION OF A PARENT."**

See *In re Butler*, *ante*, p. 909.

**Formal Adoption Unnecessary.**

A person may stand in the mutually acknowledged relation of a parent, although there has been no formal adoption. *In re Stilwell*, 34 N. Y. Suppl. 1123. The court follows *In re Butler*, 58 Hun 400, 12 N. Y. Suppl. 201, and *In re Spencer*, 4 N. Y. Suppl. 395, and refuses to follow *In re Hunt*, 33 N. Y. Suppl. 256.

**Blood Relations.**

This language is not confined to blood relations. *In re Beach*, 154 N. Y. 242, 249.

**Adults.**

The fact that at the inception of the relationship the beneficiary was an adult does not take the case out of the statute, although the fact that the person claiming to stand *in loco filiae* was an adult when the alleged relationship had its inception may well be regarded in considering the degree and sufficiency of the evidence. *In re Beach*, 154 N. Y. 242, 249.

**Parent Living.**

Two stepdaughters of the testatrix had always been recognized and treated like her own children. But the fact that the father is still living prevents them from being recognized as such and given an exemption and they are therefore taxable at five per cent. *In re Stebbins*, 52 Misc. 438, 103 N. Y. Suppl. 563.

N. Y. St. 1905, c. 368, amended the tax as to persons standing in the mutually acknowledged relation of a parent by inserting the provision "provided also that the parents of such child shall be deceased when such relationship commenced." Therefore legacies to stepchildren are taxable unless the parents of the child were dead when the relationship commenced. *In re Wheeler*, 115 N. Y. App. Div. 616, 100 N. Y. Suppl. 1044.

Both parents must have been dead when the relationship commenced, to entitle an adopted child standing in the mutually acknowledged relation of a parent to exemption. *In re Harder*, 124 N. Y. App. Div. 77, 108 N. Y. Suppl. 154.

**“Widow of a Son.”**

Under section 221 as amended by the statute of 1905, chapter 368, a “widow of a son” includes the widow of a deceased adopted son of the testator. The court follows *In re Cook*, 187 N. Y. 253, 79 N. E. 991. *In re Duryea*, 128 N. Y. App. Div. 205, 112 N. Y. Suppl. 611.

**Children of Adopted Child.**

The question was raised whether the child of an adopted child came within the class of legatees taxed at the rate of one per cent or five per cent. The relation of an adopted child to the foster parent is created by statute. Nature has nothing to do with it. The question is therefore what relation was created by the statute between the descendant and the adopted child and the foster parent with reference to the subject of succession to property.

The court holds that where the statute gives an adopted child the same legal relation to the foster parent as to a child of his body that the relation extends to the heirs and next of kin of the child, that the artificial relation was given the same effect as the actual relation, and although the N. Y. St. 1896, c. 908, s. 221, does not mention the heirs and next of kin of adopted children, still the natural relation and the statutory relation are made one and the same as to the devolution of property. Therefore these children must be taxed at one per cent. *In re Cook*, 187 N. Y. 253, 261, 79 N. E. 991, reversing 114 N. Y. App. Div. 718, 99 N. Y. Suppl. 1049.

The contrary result had been reached in the following cases. *In re Moore*, 90 Hun 162, 35 N. Y. Suppl. 782; *In re Bird*, 32 N. Y. St. 899, 11 N. Y. Suppl. 895, 2 Con. Surr. 376; *In re Fisch*, 34 Misc. 146, 69 N. Y. Suppl. 493.

**Illegitimates.**

The words exempting those who have stood in the mutually acknowledged relation of parent are not confined to illegitimate children. *In re Nichol*, 91 Hun 134, 36 N. Y. Suppl. 538; *In re Beach*, 154 N. Y. 242, 48 N. E. 516.

**Living with Foster Parent.**

The circumstance that the parties lived together is important to show the relation of a parent. So stepdaughters of a testatrix who had lived with her for a long time and called her “mother” were found to stand in the mutually acknowledged relation of

parent, while another stepdaughter who was married and did not live with her did not come within that class, in *In re Capron*, 30 N. Y. St. 948, 10 N. Y. Suppl. 23. The mutually acknowledged relation of parent was found to exist where the niece when twenty-two years old had gone to live with her aunt, was a member of the family for twenty-eight years, and always addressed her as "Auntie," and where during her residence there the niece married and with her husband continued to live with her aunt, the testatrix, who supported the household. *In re Spencer*, 4 N. Y. Suppl. 395, 1 Con. Surr. 208.

But mere living in the same house does not of itself prove the parental relationship. The mere fact that the testator lived with his sister and her children as one family, that the household expenses were met out of a common fund to which each contributed, and that the sister died, and from that time one of the children had charge of the household affairs and they continued to live together as one family down to the death of the testator, and that the testator was very affectionate with his nieces, is not enough to show the mutually acknowledged relation of a parent, as the testator did not take them into his family and support and educate and maintain them. *In re Moulton*, 11 Misc. Rep. 694, 33 N. Y. Suppl. 578. Where a maiden aunt is in possession of a farm as a housekeeper as tenant in common with her adult nephews, the acknowledged relation of parent was not found, in *In re Sweetland*, 20 N. Y. Suppl. 310. Where an aunt, a wealthy woman, took care of her two infant nieces and charged them out of their estate with all sorts of trivial expenses, the court finds that the mutually acknowledged relation of a parent and child did not exist under the statute of 1892, chapter 399. *In re Birdsall*, 22 Misc. Rep. 180, 49 N. Y. Suppl. 450, 2 Gibbons 293.

### **How Designated in Family.**

The mere fact that a transferee is described in a will as "my niece and adopted daughter" does not exempt her from the inheritance tax. Further evidence of the mutually acknowledged relation of a parent must be given. *In re Fisch*, 34 Misc. 146, 69 N. Y. Suppl. 493.

The fact that the alleged foster parents and children addressed each other by some other relationship is a circumstance tending to show the parental relationship did not exist, though it is not conclusive. *In re Spencer*, N. Y. Suppl. 395, Con. Surr. 208.

The court holds that the mutually acknowledged relation of parent did not exist where children lived with their uncle and aunt and always referred to them as uncle and aunt, and the latter referred to the former as niece and the terms father, mother or daughter were never used. *In re Deutsch*, 107 N. Y. App. Div. 192, 95 N. Y. Suppl. 65. The court relies upon *In re Davis*, 98 N. Y. App. Div. 546, 90 N. Y. Suppl. 244.

Where a legatee was an orphan and had lived in the family of the testator since the age of six years, and was always treated like one of the family, she is one to whom the testator stood in the mutually acknowledged relation of a parent, although she was designated by the will as a "friend" and not a "daughter." *In re Wheeler*, 1 Misc. Rep. 450, 22 N. Y. Suppl. 1075.

The court sustains the finding that a niece stood in the "mutually acknowledged relationship of a parent" to her uncle where it appears that she had been in her uncle's family for thirteen years and supported by him although it also appears that she did not call her uncle and aunt father and mother, nor did they call her daughter. It was also objected that the uncle did not account to the niece for the income received by him on her legacy under her grandfather's will. It is urged that this shows that he assumed to set off the expense of her support against such income. Where the niece had been thirteen years in the family of her uncle supported wholly at his expense before she had any property whatever, it was natural that after the legacy had become payable to her the uncle should think it wise to apply that income to give her greater educational advantages than he felt himself able to afford. A father might have done the same, even if we assume that without authority from some court it would have been unjustified. *In re Davis*, 184 N. Y. 299, 77 N. E. 259, reversing 98 N. Y. App. Div. 546, 90 N. Y. Suppl. 244.

### **Evidence.**

The fact that the beneficiaries were taken into the family of the testatrix in their infancy, were reared, educated and provided for as children, were called by her name and adopted the same, and were treated as her children, and that the testatrix spoke of and to them as her daughters and furnished them on their marriage with their wedding and outfit as is customary, is sufficient to bring them within the words of the statute providing exemption where the mutually acknowledged relation of parent exists. *In re Nichol*, 91 Hun 134, 36 N. Y. Suppl. 538.



The evidence showed the mutually acknowledged relation of a parent in *In re Lane*, 39 Misc. Rep. 522, 80 N. Y. Suppl. 380.

### **Burden of Proof.**

The burden is upon the one claiming an exemption as standing in the acknowledged relation of a child to prove it. *In re Davis*, 98 N. Y. App. Div. 546, 90 N. Y. Suppl. 244.

### **"TO ANY LINEAL DESCENDANT."**

The words "lineal descendants" are restricted to descendants of the ancestor and do not extend to collateral heirs. *In re Smith*, 5 Dem. Surr. (N. Y.) 90.

**S. 222. Accrual and payment of tax.** All taxes imposed by this article shall be due and payable at the time of the transfer, except as herein otherwise provided. Taxes upon the transfer of any estate, property or interest therein limited, conditioned, dependent or determinable upon the happening of any contingency or future event by reason of which the fair market value thereof cannot be ascertained at the time of the transfer as herein provided, shall accrue and become due and payable when the persons or corporations beneficially entitled thereto shall come into actual possession or enjoyment thereof. Such tax shall be paid to the state comptroller in a county in which the office of appraiser is salaried and in other counties, to the county treasurer, and said state comptroller or county treasurer shall give, and every executor, administrator or trustee shall take, duplicate receipts from him of such payment as provided in section two hundred and thirty-six.

[See notes to the act of 1885, c. 483, s. 4; 1892, c. 399, s. 3; 1896, c. 908, s. 222; 1897, c. 284, s. 3; 1899, c. 76; 1901, c. 173; 1905, c. 368.]

The tax accrues on the death of the testator, see *ante*, p. 803.

### **Taxes upon the Transfer of any Estate . . . Determinable upon the Happening of any Contingency or Future Event.**

This section of the statute has no application to vested remainders after a life estate where they are absolute and not subject to be divested or to fail in any contingency whatever. The present value of these remainders is capable of ready computation by the annuity tables, and they are therefore subject to present taxation. *In re Dows*, 167 N. Y. 227, 233, 60 N. E. 439, 52 L. R. A. 433, 88 Am. St. Rep. 508, affirming 60 N. Y. App. Div. 630 (affirmed *sub nomine*, *Orr v. Gilman*, 183 U. S. 278, 22 S. Ct. 213, 46 L. Ed. 196).

Date for appraisal of contingent and remainder interests, see *ante*, p. 820.

**Applies to Gifts Causa Mortis.**

The court remarks that the rule that the will takes effect from the death of the testator and that if the inheritance tax was in force at the death of the testator then the tax should be collected applies also to gifts *causa mortis*. *In re Masury*, 159 N. Y. 532, 53 N. E. 1127, affirming 28 N. Y. App. Div. 580.

**S. 223. Discount and interest.** If such tax is paid within six months from the accrual thereof, a discount of five per centum shall be allowed and deducted therefrom. If such tax is not paid within eighteen months from the accrual thereof, interest shall be charged and collected thereon at the rate of ten per centum per annum from the time the tax accrued; unless by reason of claims made upon the estate, necessary litigation or other unavoidable cause of delay, such tax cannot be determined and paid as herein provided, in which case interest at the rate of six per centum per annum shall be charged upon such tax from the accrual thereof until the cause of such delay is removed, after which ten per centum shall be charged.

[See notes to act of 1885, c. 483, s. 4; 1887, c. 713; 1892, c. 399; 1896, c. 908, s. 223; 1905, c. 368.]

**Interest. — Delay.**

The executor should not be charged with five per cent interest upon the amount of the transfer tax on the estate upon the ground that he should have had the tax assessed and paid within six months after the death of the testator, where the testator died October 10, 1896, and probate was issued February 3, 1897, and the tax was assessed May 27, 1897. *In re Sudds*, 32 Misc. Rep. 182, 66 N. Y. Suppl. 231.

**Ignorance of Law no Reason for Remitting Penalty.**

Hardship resulting from ignorance of the law is no reason for relieving from the ten per cent penalty provided by the New York statute for non-payment of the tax. *In re Platt*, 8 Misc. Rep. 144, 29 N. Y. Suppl. 396.

**Litigation as Ground for Remitting Penalty.**

Litigation over an estate is a proper ground for remitting the penalty of six per cent for failure to pay the tax. *In re Bolton*, 35 Misc. Rep. 688, 72 N. Y. Suppl. 430.

**Appeal.**

A decree assessing taxes does not concern itself with the amount of interest or penalty and therefore the penalty is not a proper

ground of appeal. If the penalty is to be remitted a special application should be made to the surrogate. *In re De Graaf*, 24 Misc. 147, 53 N. Y. Suppl. 591, 2 Gibbons 516.

**S. 224. Lien of tax and collection by executors, administrators and trustees.** Every such tax shall be and remain a lien upon the property transferred until paid and the person to whom the property is so transferred, and the executors, administrators and trustees of every estate so transferred shall be personally liable for such tax until its payment. Every executor, administrator or trustee shall have full power to sell so much of the property of the decedent as will enable him to pay such tax in the same manner as he might be entitled by law to do for the payment of the debts of the testator or intestate. Any such executor, administrator or trustee having in charge or in trust any legacy or property for distribution subject to such tax shall deduct the tax therefrom and shall pay over the same to the state comptroller or county treasurer as herein provided. If such legacy or property be not in money, he shall collect the tax thereon upon the appraised value thereof from the person entitled thereto. He shall not deliver or be compelled to deliver any specific legacy or property subject to tax under this article to any person until he shall have collected the tax thereon. If any such legacy shall be charged upon or payable out of real property, the heir or devisee shall deduct such tax therefrom and pay it to the executor, administrator or trustee, and the tax shall remain a lien or charge on such real property until paid; and the payment thereof shall be enforced by the executor, administrator or trustee in the same manner that payment of the legacy might be enforced, or by the district attorney under section two hundred and thirty-five of this chapter. If any such legacy shall be given in money to any such person for a limited period, the executor, administrator or trustee shall retain the tax upon the whole amount, but if it be not in money, he shall make application to the court having jurisdiction of an accounting by him, to make an apportionment, if the case require it, of the sum to be paid into his hands by such legatees, and for such further order relative thereto as the case may require.

[See notes to the act of 1885, c. 483, ss. 4 and 7; 1887, c. 713; 1892, c. 399, s. 5; 1896, c. 908, s. 224; 1901, c. 173; 1905, c. 368.]

### **Executor's Liability.**

The liability to pay upon the executor is enforced by refusing to allow him credit of such liability on his accounting unless he produce the voucher required by the act. *In re Jones*, 5 Dem. Surr. (N. Y.) 30.

### **Relying on Void Order.**

The court holds that where executors have paid a legacy in good faith relying upon a void order of the surrogate they are personally liable. If the surrogate had no jurisdiction then it is difficult to see how such decree could be a protection for anybody for any-

thing done in pursuance thereof. *In re Wolfe*, 21 N. Y. Suppl. 522, reversing 15 N. Y. Suppl. 539.

### **Distribution to Beneficiaries under Decree of Court is no Defence.**

The fact that an administrator who was also the sole next of kin had paid out the whole amount received under a decree on her own account prior to the assessing of the tax is no excuse for non-payment of the tax. *In re Hacket*, 14 Misc. Rep. 282, 35 N. Y. Suppl. 1051.

### **LIEN.**

#### **On Real Estate to be Sold.**

Where the testator directs that real estate shall be sold for carrying out the provisions of his will and paying debts and legacies and the real estate is not specifically devised nor expressly charged with the payment of any legacy, but formed a part of the testator's general estate, the court holds that under the statute of 1905, chapter 368, section 224, no lien exists against the real estate. The lien provided by this section attaches only to the fund to be distributed or the particular property when it passes by specific devise or bequest. *Brown v. Lawrence Park Realty Co.*, 133 N. Y. App. Div. 753, 118 N. Y. Suppl. 132.

#### **On Mortgaged Real Estate.**

"This lien, however, was not paramount to the lien of the mortgage, which was in existence prior to the decease of the testatrix. So far as the mortgagee is concerned, his rights could not well be impaired by subsequent devolutions of the title and the creation of liens associated therewith. The tax in question is not to be assimilated with the general taxes which are imposed by public authority, and which attach to property affected thereby as a whole, and without discrimination with respect to particular estates or interests therein. The right of the state in such cases is always paramount. It is not concerned with the particular estates or liens which affect the property, but, dealing with it as a whole, imposes the tax, leaving it to the parties interested in the property to secure, as between themselves, such an adjustment of the burden as the circumstances of the case may seem to require. But in the case of the transfer tax a different condition exists. It is imposed upon the right of succession, and is levied upon successors in respect

to the shares to which they succeed. *In re Hoffman*, 143 N. Y. 327, 331, 38 N. E. 311. In no sense, then, can the tax be deemed to affect the interest of one who had a lien upon the property which was paramount to the ownership of the testatrix, and therefore superior to any estate or interest which the testatrix might assume to create in the property." *Per Beekman, J.*, in *Kitching v. Shear*, 26 Misc. Rep. 436, 57 N. Y. Suppl. 464.

On the foreclosure of a mortgage where the mortgagor has died, the lien of the transfer tax although subordinate to the mortgage still cannot be wiped out as the statutes give the mortgagee no right to make the state a party to the foreclosure proceedings; and therefore the mortgagee cannot tender a title which a purchaser is bound to take. The legislature should remedy this situation which exists under the statute of 1892, chapter 399. *Kitching v. Shear*, 26 Misc. Rep. (N. Y.) 436, 57 N. Y. Suppl. 464. [The difficulty suggested in this case does not seem to be remedied as yet.—*Ed.*]

### **On Real Estate Devised for Life with Remainder Over.**

Where real estate was left to a life tenant with remainder to the brothers and sisters who survived, with a contingent remainder over, the court holds that the property is subject to a lien for the payment of the whole tax, and that if there is no money forthcoming to pay the whole tax, it is the duty of the executor to pay it. And the court directs the sale of so much of the whole of that property as may be necessary to raise the fund to pay the whole tax. *In re Wilcox*, 118 N. Y. Suppl. 254.

**S. 225. Refund of tax erroneously paid.** If any debts shall be proven against the estate of a decedent after the payment of any legacy or distributive share thereof, from which any such tax has been deducted or upon which it has been paid by the person entitled to such legacy or distributive share, and such person is required by order of the surrogate having jurisdiction, on notice to the state comptroller, to refund the amount of such debts or any part thereof, an equitable proportion of the tax shall be repaid to him by the executor, administrator or trustee, if the tax has not been paid to the state comptroller or county treasurer; or if such tax has been paid to such state comptroller or county treasurer, such officer shall refund out of the funds in his hands or custody to the credit of such taxes such equitable proportion of the tax, and credit himself with the same in the account required to be rendered by him under this article. If after the payment of any tax in pursuance of an order fixing such tax, made by the surrogate having jurisdiction, such order be modified or reversed within two years from and after the date of entry of the order fixing the tax, on due notice to the state comptroller, the state comptroller shall, if such tax was paid

in a county in which the office of appraiser is salaried, refund to the executor, administrator, trustee, person or persons by whom such tax was paid, the amount of any moneys paid or deposited on account of such tax in excess of the amount of the tax fixed by the order modified or reversed, out of the funds in his hands or custody to the credit of such taxes, and to credit himself with the same in the account required to be rendered by him under this article, or if paid in a county in which the office of appraiser is not salaried, he shall by warrant direct and allow the county treasurer of the county to refund such amount in the same manner; but no application for such refund shall be made after one year from such reversal or modification, and the representatives of the estate, legatees, devisees or distributees entitled to any refund under this section shall not be entitled to any interest upon such refund, and the state comptroller shall deduct from the fees allowed by this article to the county treasurer the amount theretofore allowed him upon such overpayment. Where it shall be proved to the satisfaction of the surrogate that deductions for debts were allowed upon the appraisal, since proved to have been erroneously allowed, it shall be lawful for such surrogate to enter an order assessing the tax upon the amount wrongfully or erroneously deducted.

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The executor does not need to appeal from the order assessing the tax in order to avail himself of the refunding provision of the statute of 1896, chapter 908, section 225. *In re Sherar*, 25 Misc. Rep. 138, 54 N. Y. Suppl. 930, 2 Gibbons 28.

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Where a widow by misconception of the law advanced the money to pay more than was really chargeable to her and where the property is sold for the tax she is subrogated to the rights of the state and should be repaid what she has erroneously paid with interest at six per cent from the time of repayment. *In re Wilcox*, 118 N. Y. Suppl. 254.

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The executor may make a motion for a refunding of part of the transfer tax even after the end of two years provided by section 1290 of the Code of Civil Procedure. *In re Sherar*, 25 Misc. Rep. 138, 54 N. Y. Suppl. 930, 2 Gibbons 28.

An illegal tax was paid in November, 1895, and the law then in force, the statute of 1892, gave the taxpayer five years in which to apply for a refund of any part of the transfer tax. This period had not expired when the statute of 1897, c. 284, went into effect, apparently providing for an unlimited period in which to apply for a modification or reversal of the original order, but required the application for the refund to be made within one year after such modification or reversal. N. Y. St. 1900, c. 382, limited the period within which both the application for modification or reversal and for a refund must be made. The taxpayer applied to the surrogate in October, 1903, for an order, modifying the original order, which fixed the transfer tax, and the court holds that under section 6, article 7, of the state constitution "neither the legislature, the canal board nor any person or persons acting in behalf of the state shall audit, allow or pay any claim which, as between citizens of the state, would be barred by lapse of time." It therefore seems clear that the comptroller could not have audited, allowed or paid this claim even if the two years' limitation in the statute of 1900 did not apply. While it is to be observed, moreover, that the statute of 1900, with its two years' limitation, is to be treated as purely prospective, the same test must be applied to the act of 1897 in which event the respondent is relegated to the statute of 1892 with its five years' limitation which had elapsed by more than three years before he sought relief. *In re Hoople*, 179 N. Y. 308, 313, 72 N. E. 229, reversing 93 N. Y. App. Div. 486, 87 N. Y. Suppl. 842.

**S. 226. Taxes upon devises and bequests in lieu of commissions.**  
If a testator bequeaths or devises property to one or more executors or trustees



in lieu of their commissions or allowances, or makes them his legatees to an amount exceeding the commissions or allowances prescribed by law for an executor or trustee, the excess in value of the property so bequeathed or devised above the amount of commissions or allowances prescribed by law in similar cases shall be taxable under this article.

[See notes to the act of 1885, c. 483, s. 3; 1887, c. 713; 1892, c. 399, s. 8; 1896, c. 908, s. 227; 1905, c. 368. As to trustees' commissions see *post*, p. 952.]

**S. 227. Liability of certain corporations to tax.** If a foreign executor, administrator or trustee shall assign or transfer any stock or obligations in this state standing in the name of a decedent, or in trust for a decedent, liable to any such tax, the tax shall be paid to the state comptroller or the treasurer of the proper county on the transfer thereof. No safe deposit company, trust company, corporation, bank or other institution, person or persons having in possession or under control securities, deposits, or other assets belonging to or standing in the name of a decedent who was a resident or non-resident, or belonging to, or standing in the joint names of such a decedent and one or more persons, including the shares of the capital stock of, or other interests in, the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer herein provided, shall deliver or transfer the same to the executors, administrators or legal representatives of said decedent, or to the survivor or survivors when held in the joint names of a decedent and one or more persons, or upon their order or request. Unless notice of the time and place of such intended delivery or transfer be served upon the state comptroller at least ten days prior to said delivery or transfer; nor shall any such safe deposit company, trust company, corporation, bank or other institution, person or persons, deliver or transfer any securities, deposits or other assets belonging to or standing in the name of a decedent, or belonging to, or standing in the joint names of a decedent and one or more persons, including the shares of the capital stock of, or other interests in, the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer, without retaining a sufficient portion or amount thereof to pay any tax and interest which may thereafter be assessed on account of the delivery or transfer of such securities, deposits or other assets, including the shares of the capital stock of, or other interests in, the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer, under the provisions of this article, unless the state comptroller consents thereto in writing. And it shall be lawful for the said state comptroller, personally or by representative, to examine said securities, deposits or assets at the time of such delivery or transfer. Failure to serve such notice or failure to allow such examination or failure to retain a sufficient portion or amount to pay such tax and interest as herein provided shall render said safe deposit company, trust company, corporation, bank or other institution, person or persons, liable to the payment of the amount of the tax and interest due or thereafter to become due upon said securities, deposits or other assets, including the shares of the capital stock of, or other interests in, the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer and in addition thereto, a penalty of not less than five or more than twenty-five thousand dollars; and the payment of such tax and interest thereon, or of the penalty above prescribed,

or both, may be enforced in an action brought by the state comptroller in any court of competent jurisdiction.

[See notes to the act of 1885, c. 483, s. 11; 1892, c. 399, s. 9; 1896, c. 908, s. 228; 1901, c. 173; 1902, c. 101; 1905, c. 368; 1908, c. 310.]

St. 1911, c. 736, would seem to have rendered a large portion of this section inapt at the present time. There is, for example, now no reason for requiring notice of the transfer of stock in domestic corporations owned by non-residents. Possibly such provisions have been repealed by implication by the act of 1911. This view would seem to find favor from the ruling in *Dunham v. City Trust Co.*, noted *post*.

We are informed by the attorney for the tax commissioner that the practice of his office is still to require notice as before.

**Stock in a foreign corporation** owned by a non-resident is non-taxable and therefore the consent of the state comptroller provided for by this section is not necessary to the transfer. *Dunham v. City Trust Co.*, 115 N. Y. App. Div. 584, 101 N. Y. Suppl. 87.

**S. 228. Jurisdiction of the surrogate.** The surrogate's court of every county of the state having jurisdiction to grant letters testamentary or of administration upon the estate of a decedent whose property is chargeable with any tax under this article, or to appoint a trustee of such estate or any part thereof, or to give ancillary letters thereon, shall have jurisdiction to hear and determine all questions arising under the provisions of this article, and to do any act in relation thereto authorized by law to be done by a surrogate in other matters or proceedings coming within his jurisdiction; and if two or more surrogates' courts shall be entitled to exercise any such jurisdiction, the surrogate first acquiring jurisdiction hereunder shall retain the same to the exclusion of every other surrogate. Every petition for ancillary letters testamentary or ancillary letters of administration made in pursuance of the provisions of article seven, title three, chapter eighteen of the code of civil procedure shall set forth the name of the state comptroller as a person to be cited as therein prescribed, and a true and correct statement of all the decedent's property in this state and the value thereof; and upon the presentation thereof the surrogate shall issue a citation directed to the state comptroller; and upon the return of the citation the surrogate shall determine the amount of the tax which may be or become due under the provisions of this article and his decree awarding the letters may contain any provision for the payment of such tax or the giving of security therefor which might be made by such surrogate if the state comptroller were a creditor of the decedent..

[See notes to the act of 1885, c. 483, s. 15; 1892, c. 399, s. 10; 1896, c. 908 s. 229; 1901, c. 173, s. 4; 1905, c. 368.]

The evidence showed the mutually acknowledged relation of a parent in *In re Lane*, 39 Misc. Rep. 522, 80 N. Y. Suppl. 380.

### **Burden of Proof.**

The burden is upon the one claiming an exemption as standing in the acknowledged relation of a child to prove it. *In re Davis*, 98 N. Y. App. Div. 546, 90 N. Y. Suppl. 244.

### **"TO ANY LINEAL DESCENDANT."**

The words "lineal descendants" are restricted to descendants of the ancestor and do not extend to collateral heirs. *In re Smith*, 5 Dem. Surr. (N. Y.) 90.

**S. 222. Accrual and payment of tax.** All taxes imposed by this article shall be due and payable at the time of the transfer, except as herein otherwise provided. Taxes upon the transfer of any estate, property or interest therein limited, conditioned, dependent or determinable upon the happening of any contingency or future event by reason of which the fair market value thereof cannot be ascertained at the time of the transfer as herein provided, shall accrue and become due and payable when the persons or corporations beneficially entitled thereto shall come into actual possession or enjoyment thereof. Such tax shall be paid to the state comptroller in a county in which the office of appraiser is salaried and in other counties, to the county treasurer, and said state comptroller or county treasurer shall give, and every executor, administrator or trustee shall take, duplicate receipts from him of such payment as provided in section two hundred and thirty-six.

[See notes to the act of 1885, c. 483, s. 4; 1892, c. 399, s. 3; 1896, c. 908, s. 222; 1897, c. 284, s. 3; 1899, c. 76; 1901, c. 173; 1905, c. 368.]

The tax accrues on the death of the testator, see *ante*, p. 803.

### **Taxes upon the Transfer of any Estate . . . Determinable upon the Happening of any Contingency or Future Event.**

This section of the statute has no application to vested remainders after a life estate where they are absolute and not subject to be divested or to fail in any contingency whatever. The present value of these remainders is capable of ready computation by the annuity tables, and they are therefore subject to present taxation. *In re Dows*, 167 N. Y. 227, 233, 60 N. E. 439, 52 L. R. A. 433, 88 Am. St. Rep. 508, affirming 60 N. Y. App. Div. 630 (affirmed *sub nomine*, *Orr v. Gilman*, 183 U. S. 278, 22 S. Ct. 213, 46 L. Ed. 196).

Date for appraisal of contingent and remainder interests, see *ante*, p. 820.

**Applies to Gifts Causa Mortis.**

The court remarks that the rule that the will takes effect from the death of the testator and that if the inheritance tax was in force at the death of the testator then the tax should be collected applies also to gifts *causa mortis*. *In re Masury*, 159 N. Y. 532, 53 N. E. 1127, affirming 28 N. Y. App. Div. 580.

**S. 223. Discount and interest.** If such tax is paid within six months from the accrual thereof, a discount of five per centum shall be allowed and deducted therefrom. If such tax is not paid within eighteen months from the accrual thereof, interest shall be charged and collected thereon at the rate of ten per centum per annum from the time the tax accrued; unless by reason of claims made upon the estate, necessary litigation or other unavoidable cause of delay, such tax cannot be determined and paid as herein provided, in which case interest at the rate of six per centum per annum shall be charged upon such tax from the accrual thereof until the cause of such delay is removed, after which ten per centum shall be charged.

[See notes to act of 1885, c. 483, s. 4; 1887, c. 713; 1892, c. 399; 1896, c. 908, s. 223; 1905, c. 368.]

**Interest. — Delay.**

The executor should not be charged with five per cent interest upon the amount of the transfer tax on the estate upon the ground that he should have had the tax assessed and paid within six months after the death of the testator, where the testator died October 10, 1896, and probate was issued February 3, 1897, and the tax was assessed May 27, 1897. *In re Sudds*, 32 Misc. Rep. 182, 66 N. Y. Suppl. 231.

**Ignorance of Law no Reason for Remitting Penalty.**

Hardship resulting from ignorance of the law is no reason for relieving from the ten per cent penalty provided by the New York statute for non-payment of the tax. *In re Platt*, 8 Misc. Rep. 144, 29 N. Y. Suppl. 396.

**Litigation as Ground for Remitting Penalty.**

Litigation over an estate is a proper ground for remitting the penalty of six per cent for failure to pay the tax. *In re Bolton*, 35 Misc. Rep. 688, 72 N. Y. Suppl. 430.

**Appeal.**

A decree assessing taxes does not concern itself with the amount of interest or penalty and therefore the penalty is not a proper

ground of appeal. If the penalty is to be remitted a special application should be made to the surrogate. *In re De Graaf*, 24 Misc. 147, 53 N. Y. Suppl. 591, 2 Gibbons 516.

**S. 224. Lien of tax and collection by executors, administrators and trustees.** Every such tax shall be and remain a lien upon the property transferred until paid and the person to whom the property is so transferred, and the executors, administrators and trustees of every estate so transferred shall be personally liable for such tax until its payment. Every executor, administrator or trustee shall have full power to sell so much of the property of the decedent as will enable him to pay such tax in the same manner as he might be entitled by law to do for the payment of the debts of the testator or intestate. Any such executor, administrator or trustee having in charge or in trust any legacy or property for distribution subject to such tax shall deduct the tax therefrom and shall pay over the same to the state comptroller or county treasurer as herein provided. If such legacy or property be not in money, he shall collect the tax thereon upon the appraised value thereof from the person entitled thereto. He shall not deliver or be compelled to deliver any specific legacy or property subject to tax under this article to any person until he shall have collected the tax thereon. If any such legacy shall be charged upon or payable out of real property, the heir or devisee shall deduct such tax therefrom and pay it to the executor, administrator or trustee, and the tax shall remain a lien or charge on such real property until paid; and the payment thereof shall be enforced by the executor, administrator or trustee in the same manner that payment of the legacy might be enforced, or by the district attorney under section two hundred and thirty-five of this chapter. If any such legacy shall be given in money to any such person for a limited period, the executor, administrator or trustee shall retain the tax upon the whole amount, but if it be not in money, he shall make application to the court having jurisdiction of an accounting by him, to make an apportionment, if the case require it, of the sum to be paid into his hands by such legatees, and for such further order relative thereto as the case may require.

[See notes to the act of 1885, c. 483, ss. 4 and 7; 1887, c. 713; 1892, c. 399, s. 5; 1896, c. 906, s. 224; 1901, c. 173; 1906, c. 368.]

### **Executor's Liability.**

The liability to pay upon the executor is enforced by refusing to allow him credit of such liability on his accounting unless he produce the voucher required by the act. *In re Jones*, 5 Dem. Surr. (N. Y.) 30.

### **Relying on Void Order.**

The court holds that where executors have paid a legacy in good faith relying upon a void order of the surrogate they are personally liable. If the surrogate had no jurisdiction then it is difficult to see how such decree could be a protection for anybody for any-

thing done in pursuance thereof. *In re Wolfe*, 21 N. Y. Suppl. 522, reversing 15 N. Y. Suppl. 539.

### **Distribution to Beneficiaries under Decree of Court is no Defence.**

The fact that an administrator who was also the sole next of kin had paid out the whole amount received under a decree on her own account prior to the assessing of the tax is no excuse for non-payment of the tax. *In re Hacket*, 14 Misc. Rep. 282, 35 N. Y. Suppl. 1051.

### **LIEN.**

#### **On Real Estate to be Sold.**

Where the testator directs that real estate shall be sold for carrying out the provisions of his will and paying debts and legacies and the real estate is not specifically devised nor expressly charged with the payment of any legacy, but formed a part of the testator's general estate, the court holds that under the statute of 1905, chapter 368, section 224, no lien exists against the real estate. The lien provided by this section attaches only to the fund to be distributed or the particular property when it passes by specific devise or bequest. *Brown v. Lawrence Park Realty Co.*, 133 N. Y. App. Div. 753, 118 N. Y. Suppl. 132.

#### **On Mortgaged Real Estate.**

"This lien, however, was not paramount to the lien of the mortgage, which was in existence prior to the decease of the testatrix. So far as the mortgagee is concerned, his rights could not well be impaired by subsequent devolutions of the title and the creation of liens associated therewith. The tax in question is not to be assimilated with the general taxes which are imposed by public authority, and which attach to property affected thereby as a whole, and without discrimination with respect to particular estates or interests therein. The right of the state in such cases is always paramount. It is not concerned with the particular estates or liens which affect the property, but, dealing with it as a whole, imposes the tax, leaving it to the parties interested in the property to secure, as between themselves, such an adjustment of the burden as the circumstances of the case may seem to require. But in the case of the transfer tax a different condition exists. It is imposed upon the right of succession, and is levied upon successors in respect

to the shares to which they succeed. *In re Hoffman*, 143 N. Y. 327, 331, 38 N. E. 311. In no sense, then, can the tax be deemed to affect the interest of one who had a lien upon the property which was paramount to the ownership of the testatrix, and therefore superior to any estate or interest which the testatrix might assume to create in the property." *Per Beekman, J.*, in *Kitching v. Shear*, 26 Misc. Rep. 436, 57 N. Y. Suppl. 464.

On the foreclosure of a mortgage where the mortgagor has died, the lien of the transfer tax although subordinate to the mortgage still cannot be wiped out as the statutes give the mortgagee no right to make the state a party to the foreclosure proceedings; and therefore the mortgagee cannot tender a title which a purchaser is bound to take. The legislature should remedy this situation which exists under the statute of 1892, chapter 399. *Kitching v. Shear*, 26 Misc. Rep. (N. Y.) 436, 57 N. Y. Suppl. 464. [The difficulty suggested in this case does not seem to be remedied as yet.—*Ed.*]

### On Real Estate Devised for Life with Remainder Over.

Where real estate was left to a life tenant with remainder to the brothers and sisters who survived, with a contingent remainder over, the court holds that the property is subject to a lien for the payment of the whole tax, and that if there is no money forthcoming to pay the whole tax, it is the duty of the executor to pay it. And the court directs the sale of so much of the whole of that property as may be necessary to raise the fund to pay the whole tax. *In re Wilcox*, 118 N. Y. Suppl. 254.

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**Limitations.**

The executor may make a motion for a refunding of part of the transfer tax even after the end of two years provided by section 1290 of the Code of Civil Procedure. *In re Sherar*, 25 Misc. Rep. 138, 54 N. Y. Suppl. 930, 2 Gibbons 28.

An illegal tax was paid in November, 1895, and the law then in force, the statute of 1892, gave the taxpayer five years in which to apply for a refund of any part of the transfer tax. This period had not expired when the statute of 1897, c. 284, went into effect, apparently providing for an unlimited period in which to apply for a modification or reversal of the original order, but required the application for the refund to be made within one year after such modification or reversal. N. Y. St. 1900, c. 382, limited the period within which both the application for modification or reversal and for a refund must be made. The taxpayer applied to the surrogate in October, 1903, for an order, modifying the original order, which fixed the transfer tax, and the court holds that under section 6, article 7, of the state constitution "neither the legislature, the canal board nor any person or persons acting in behalf of the state shall audit, allow or pay any claim which, as between citizens of the state, would be barred by lapse of time." It therefore seems clear that the comptroller could not have audited, allowed or paid this claim even if the two years' limitation in the statute of 1900 did not apply. While it is to be observed, moreover, that the statute of 1900, with its two years' limitation, is to be treated as purely prospective, the same test must be applied to the act of 1897 in which event the respondent is relegated to the statute of 1892 with its five years' limitation which had elapsed by more than three years before he sought relief. *In re Hoople*, 179 N. Y. 308, 313, 72 N. E. 229, reversing 93 N. Y. App. Div. 486, 87 N. Y. Suppl. 842.

**S. 226. Taxes upon devises and bequests in lieu of commissions.**

If a testator bequeaths or devises property to one or more executors or trustees

in lieu of their commissions or allowances, or makes them his legatees to an amount exceeding the commissions or allowances prescribed by law for an executor or trustee, the excess in value of the property so bequeathed or devised above the amount of commissions or allowances prescribed by law in similar cases shall be taxable under this article.

[See notes to the act of 1885, c. 483, s. 3; 1887, c. 713; 1892, c. 399, s. 8; 1896, c. 908, s. 227; 1905, c. 368. As to trustees' commissions see *post*, p. 952.]

**S. 227. Liability of certain corporations to tax.** If a foreign executor, administrator or trustee shall assign or transfer any stock or obligations in this state standing in the name of a decedent, or in trust for a decedent, liable to any such tax, the tax shall be paid to the state comptroller or the treasurer of the proper county on the transfer thereof. No safe deposit company, trust company, corporation, bank or other institution, person or persons having in possession or under control securities, deposits, or other assets belonging to or standing in the name of a decedent who was a resident or non-resident, or belonging to, or standing in the joint names of such a decedent and one or more persons, including the shares of the capital stock of, or other interests in, the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer herein provided, shall deliver or transfer the same to the executors, administrators or legal representatives of said decedent, or to the survivor or survivors when held in the joint names of a decedent and one or more persons, or upon their order or request, unless notice of the time and place of such intended delivery or transfer be served upon the state comptroller at least ten days prior to said delivery or transfer; nor shall any such safe deposit company, trust company, corporation, bank or other institution, person or persons, deliver or transfer any securities, deposits or other assets belonging to or standing in the name of a decedent, or belonging to, or standing in the joint names of a decedent and one or more persons, including the shares of the capital stock of, or other interests in, the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer, without retaining a sufficient portion or amount thereof to pay any tax and interest which may thereafter be assessed on account of the delivery or transfer of such securities, deposits or other assets, including the shares of the capital stock of, or other interests in, the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer, under the provisions of this article, unless the state comptroller consents thereto in writing. And it shall be lawful for the said state comptroller, personally or by representative, to examine said securities, deposits or assets at the time of such delivery or transfer. Failure to serve such notice or failure to allow such examination or failure to retain a sufficient portion or amount to pay such tax and interest as herein provided shall render said safe deposit company, trust company, corporation, bank or other institution, person or persons, liable to the payment of the amount of the tax and interest due or thereafter to become due upon said securities, deposits or other assets, including the shares of the capital stock of, or other interests in, the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer and in addition thereto, a penalty of not less than five or more than twenty-five thousand dollars; and the payment of such tax and interest thereon, or of the penalty above prescribed,

or both, may be enforced in an action brought by the state comptroller in any court of competent jurisdiction.

[See notes to the act of 1885, c. 483, s. 11; 1892, c. 399, s. 9; 1896, c. 908, s. 228; 1901, c. 173; 1902, c. 101; 1905, c. 368; 1908, c. 310.]

St. 1911, c. 736, would seem to have rendered a large portion of this section inapt at the present time. There is, for example, now no reason for requiring notice of the transfer of stock in domestic corporations owned by non-residents. Possibly such provisions have been repealed by implication by the act of 1911. This view would seem to find favor from the ruling in *Dunham v. City Trust Co.*, noted *post*.

We are informed by the attorney for the tax commissioner that the practice of his office is still to require notice as before.

**Stock in a foreign corporation** owned by a non-resident is non-taxable and therefore the consent of the state comptroller provided for by this section is not necessary to the transfer. *Dunham v. City Trust Co.*, 115 N. Y. App. Div. 584, 101 N. Y. Suppl. 87.

**S. 228. Jurisdiction of the surrogate.** The surrogate's court of every county of the state having jurisdiction to grant letters testamentary or of administration upon the estate of a decedent whose property is chargeable with any tax under this article, or to appoint a trustee of such estate or any part thereof, or to give ancillary letters thereon, shall have jurisdiction to hear and determine all questions arising under the provisions of this article, and to do any act in relation thereto authorized by law to be done by a surrogate in other matters or proceedings coming within his jurisdiction; and if two or more surrogates' courts shall be entitled to exercise any such jurisdiction, the surrogate first acquiring jurisdiction hereunder shall retain the same to the exclusion of every other surrogate. Every petition for ancillary letters testamentary or ancillary letters of administration made in pursuance of the provisions of article seven, title three, chapter eighteen of the code of civil procedure shall set forth the name of the state comptroller as a person to be cited as therein prescribed, and a true and correct statement of all the decedent's property in this state and the value thereof; and upon the presentation thereof the surrogate shall issue a citation directed to the state comptroller; and upon the return of the citation the surrogate shall determine the amount of the tax which may be or become due under the provisions of this article and his decree awarding the letters may contain any provision for the payment of such tax or the giving of security therefor which might be made by such surrogate if the state comptroller were a creditor of the decedent..

[See notes to the act of 1885, c. 483, s. 15; 1892, c. 399, s. 10; 1896, c. 908 s. 229; 1901, c. 173, s. 4; 1905, c. 368.]

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or both, may be enforced in an action brought by the state comptroller in any court of competent jurisdiction.

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[See notes to the act of 1885, c. 483, s. 15; 1892, c. 399, s. 10; 1896, c. 908 s. 229; 1901, c. 173, s. 4; 1905, c. 368.]

**TO SETTLE EXEMPTIONS.****Petition for Exemption.**

An administrator's petition for an order of exemption is insufficient to support such an order where it relates only to the personal property of the decedent and contains no proof that he did not die seized of real estate liable to taxation under the statute of 1903, chap. 41. *In re Collins*, 104 N.Y. App. Div. 184, 93 N.Y. Suppl. 342.

**Order of Exemption.**

There is no provision in the tax law which expressly empowers the surrogate's court to grant an order of exemption, but the order may properly be made, however, in a proceeding to appraise the estate in view of the language of section 229. *In re Collins*, 104 N. Y. App. Div. 184, 93 N. Y. Suppl. 342.

**Notice to Comptroller.**

Section 231 expressly requires that where there is an appraisal, notice of the time and place thereof must be given to the state comptroller and it would seem, therefore, that an order of exemption should be made only after notice to the state comptroller. *In re Collins*, 104 N. Y. App. Div. 184, 93 N. Y. Suppl. 342.

**S. 229.** (As amended by St. 1910, c. 706.) **Appointment of appraisers, stenographers and clerks.** The state comptroller shall appoint and may at pleasure remove not to exceed six persons in the county of New York; three persons in the county of Kings, and one person in the counties of Albany, Dutchess, Erie, Monroe, Nassau, Oneida, Onondaga, Orange, Queens, Rensselaer, Richmond, Suffolk and Westchester, to act as appraisers therein. The appraisers so appointed shall receive an annual salary to be fixed by the state comptroller, together with their actual and necessary traveling expenses and witness fees, as hereinafter provided, payable monthly by the state comptroller out of any funds in his hands or custody on account of transfer tax. The salaries of each of the appraisers so appointed shall not exceed the following amounts: In New York county, four thousand dollars; in Kings county, four thousand dollars; in Erie county, three thousand dollars; in Westchester and Albany counties, twenty-five hundred dollars; in Nassau county, two thousand dollars; in Queens, Monroe and Onondaga counties, one thousand five hundred dollars; in Dutchess, Oneida, Orange, Rensselaer, Richmond and Suffolk counties, one thousand dollars. Each of the said appraisers shall file with the state comptroller his oath of office and his official bond in the penal sum of not less than one thousand dollars, in the discretion of the state comptroller, conditioned for the faithful performance of his duties as such appraiser, which bond shall be approved by the attorney general and the state comptroller. The state comptroller shall retain out of any funds in his hands on account of said tax the following amounts:

First, a sum sufficient to provide the appraisers of New York county with six stenographers, three clerks and an examiner of values, of Kings county with three stenographers, and of Erie county with one clerk, appointed by the state comptroller, whose salary shall not exceed fifteen hundred dollars a year each. Second, a sum to be used in defraying the expenses for office rent, stationery, postage, process serving and other similar expenses necessarily incurred in the appraisal of estates, not exceeding ten thousand five hundred dollars a year in New York county, and three thousand dollars a year in Kings county. Third, a sum not exceeding ten thousand dollars to be used in defraying the expenses for extra clerical and stenographic services in the transfer tax bureau of the comptroller's office at Albany, during the period ending September thirtieth, nineteen hundred and eleven.

[See notes to the acts of 1885, c. 483, s. 13; 1892, c. 399, ss. 11, 14; 1896, c. 908, s. 230; 1897, c. 284, s. 6; 1899, c. 76; 1900, c. 658; 1901, c. 173, s. 4; 1901, c. 493; 1902, c. 496; 1904, c. 758; 1905, c. 368; 1906, c. 567; 1907, c. 709; 1908, c. 310; 1908, c. 312; 1908, c. 321; 1909, c. 283; 1909, c. 62, s. 229; 1910, c. 706.]

### **Application to Appoint.**

An application of the state comptroller upon a verified petition setting forth every fact upon which the jurisdiction of the surrogate to act depended made upon information and belief is a proper application to force the surrogate to appoint appraisers. *Kelsey v. Church*, 112 N. Y. App. Div. 408, 98 N. Y. Suppl. 535.

### **Appointment Compelled by Mandamus.**

Section 230 of the tax law that the surrogate shall appoint a competent person as appraiser whenever occasion may require is mandatory and he may be forced to appoint such an appraiser by an application for a mandamus. *Kelsey v. Church*, 112 N. Y. App. Div. 408, 98 N. Y. Suppl. 535.

### **Jurisdiction of Comptroller and Surrogate to Appoint.**

The surrogate is bound to appoint as appraiser a person appointed under the provision of the New York statute of 1900, chapter 658. *In re Sondheim*, 69 N. Y. App. Div. 5, 74 N. Y. Suppl. 510, 66 N. Y. Suppl. 726.

N. Y. St. 1896, c. 368, a. 10, ss. 229 and 234, provide for the appointment of tax appraisers and tax assistants by the comptroller of the state. The court holds that these sections invest the comptroller with absolute power of appointing and removing such officials. The transfer tax assistants, however, are connected with the administration of the surrogate's office and the statute therefore plainly provides for the joint action of both officials and selection and control of this clerk.



The surrogate's power, however, is limited to a recommendation, and if the recommendation is not satisfactory the comptroller is not compelled to accept it and make the appointment, and the position remains vacant. *Duell v. Glynn*, 191 N. Y. 357, 84 N. E. 282, affirming 122 N. Y. App. Div. 314, 56 Misc. 41, 106 N. Y. Suppl. 716.

Under the statute of 1896, section 230, the surrogate had jurisdiction to appoint an appraiser with or without a petition and of his own motion whenever in the sound exercise of his discretion he deems it proper to do so, in a case in which he is officially cognizant of the fact that property has been transferred so as to be subject to the tax. As the surrogate may of his own motion appoint an appraiser without petition his authority is not limited because the petition is presented by a competent person with allegations made upon information and belief. *In re O'Donohue*, 44 N. Y. App. Div. 186, 60 N. Y. Suppl. 690.

### **Removal of Appraisers.**

The statute of 1900, chapter 658, authorized the removal of a state transfer tax appraiser by the state comptroller without a hearing and although there were no charges of incompetency or misconduct against him. *People v. Glynn*, 128 N. Y. App. Div. 257, 112 N. Y. Suppl. 695.

**S. 230. Proceedings by appraiser.** In each county in which the office of appraiser is not salaried the county treasurer shall act as appraiser. The surrogate, either upon his own motion, or upon the application of any interested person, including the state comptroller, shall by order direct the person or one of the persons appointed pursuant to section two hundred and twenty-nine of this article in counties in which the office of appraiser is salaried, and in other counties, the county treasurer, to fix the fair market value of property of persons whose estates shall be subject to the payment of any tax imposed by this article.

Every such appraiser shall forthwith give notice by mail to all persons known to have a claim or interest in the property to be appraised, including the state comptroller, and to such persons as the surrogate may by order direct, of the time and place when he will appraise such property. He shall at such time and place appraise the same at its fair market value as herein prescribed; and for that purpose the said appraiser is authorized to issue subpoenas and to compel the attendance of witnesses before him and to take the evidence of such witnesses under oath concerning such property and the value thereof; and he shall make report thereof and of such value in writing, to the said surrogate, together with the depositions of the witnesses examined, and such other facts in relation thereto and to said matter as the surrogate may order or require. Every appraiser, except in the counties in which the office of appraiser is salaried, for which provision is hereinbefore made, shall be paid by the state comptroller and after

the audit of said state comptroller, his actual and necessary traveling expenses and the fees paid such witnesses, which fees shall be the same as those now paid to witnesses subpoenaed to attend in courts of record, payment to be made out of funds in the hands of the county treasurer of the proper county on account of the tax imposed under the provisions of this article.

The value of every future or limited estate, income, interest or annuity dependent upon any life or lives in being, shall be determined by the rule, method and standard of mortality and value employed by the superintendent of insurance in ascertaining the value of policies of life insurance and annuities for the determination of liabilities of life insurance companies, except that the rate of interest for making such computation shall be five per centum per annum.

In estimating the value of any estate or interest in property, to the beneficial enjoyment or possession whereof there are persons or corporations presently entitled thereto, no allowance shall be made on account of any contingent incumbrance thereon, nor on account of any contingency upon the happening of which the estate or property or some part thereof or interest therein might be abridged, defeated or diminished; provided, however, that in the event of such incumbrance taking effect as an actual burden upon the interest of the beneficiary, or in the event of the abridgment, defeat or diminution of said estate or property or interest therein as aforesaid, a return shall be made to the person properly entitled thereto of a proportionate amount of such tax on account of the incumbrance when taking effect, or so much as will reduce the same to the amount which would have been assessed on account of the actual duration or extent of the estate or interest enjoyed. Such return of tax shall be made in the manner provided by section two hundred and twenty-five of this article.

Where any property shall, after the passage of this chapter, be transferred subject to any charge, estate or interest, determinable by the death of any person, or at any period ascertainable only by reference to death, the increase accruing to any person or corporation upon the extinction or determination of such charge, estate or interest, shall be deemed a transfer of property taxable under the provisions of this article in the same manner as though the person or corporation beneficially entitled thereto had then acquired such increase from the person from whom the title to their respective estates or interests is derived.

When property is transferred in trust or otherwise, and the rights, interest or estates of the transferees are dependent upon contingencies or conditions whereby they may be wholly or in part created, defeated, extended or abridged, a tax shall be imposed upon said transfer at the highest rate which, on the happening of any of the said contingencies or conditions, would be possible under the provisions of this article, and such tax so imposed shall be due and payable forthwith by the executors or trustees out of the property transferred; provided, however, that on the happening of any contingency whereby the said property, or any part thereof, is transferred to a person or corporation exempt from taxation under the provisions of this article, or to any person taxable at a rate less than the rate imposed and paid, such person or corporation shall be entitled to a return of so much of the tax imposed and paid as is the difference between the amount paid and the amount which said person or corporation should pay under the provisions of this article, with interest thereon at the rate of three per centum per annum from the time of payment. Such return of overpayment shall be made in the manner provided by section two hundred and twenty-five of this article.

Estates in expectancy which are contingent or defeasible and in which proceedings for the determination of the tax have not been taken or where the taxation thereof has been held in abeyance, shall be appraised at their full, undiminished value when the persons entitled thereto shall come into the beneficial enjoyment or possession thereof, without diminution for or on account of any valuation theretofore made of the particular estates for purposes of taxation, upon which said estates in expectancy may have been limited.

Where an estate for life or for years can be divested by the act or omission of the legatee or devisee it shall be taxed as if there were no possibility of such divesting.

The report of the appraiser shall be made in duplicate, one of which duplicates shall be filed in the office of the surrogate and the other in the office of the state comptroller.

[See notes to the acts of 1885, c. 483, s. 13; 1887, c. 713; 1892, c. 167; 1892, c. 399, ss. 11, 12; 1896, c. 908, s. 231; 1897, c. 284, s. 6; 1899, c. 76; 1900, c. 658; 1901, c. 173, s. 5; 1902, c. 496; 1905, c. 368.]

### Duty of Executor.

N. Y. St. 1887, c. 713, s. 13, makes it primarily the duty of the executor to apply for an appraisement so that he may ascertain and pay the tax; and the power given to the surrogate on his own motion to cause appraisement to be made was not intended to relieve the executor from his duty in the matter. *Fraser v. People*, 3 N. Y. Suppl. 134, 6 Dem. Surr. 174.

Under the statute of 1885, chapter 483, the administrator was under no duty or obligation voluntarily to aid the appraiser in any manner whatever in making the appraisal; and the court holds, therefore, that the administrator was not guilty of any fraudulent acts in failing to appraise the appraiser of certain claims belonging to the estate. *In re Smith*, 14 Misc. Rep. 169, 35 N. Y. Suppl. 701.

### Notice.

#### *Notice to Comptroller.*

A surrogate's decree producing an assessment made without notice to the state comptroller and county treasurer in 1899 should be vacated. *In re Fulton*, 30 Misc. Rep. 70, 62 N. Y. Suppl. 995.

An appraisal is irregular where the proof of service does not show that the comptroller of the city of New York was notified of the time and place of the appraisal. *In re Bolton*, 35 Misc. Rep. 688, 72 N. Y. Suppl. 430.

#### *Notice to Heirs.*

The district attorney sought to obtain an order for the payment of the inheritance tax by the administrators, and they appeared

in opposition as well as one of the heirs. It appeared that no notice of the appraisement was given to an heir, although a condition of affairs might arise in which she would be personally liable for the tax and could be compelled to pay it as a person who "had received the property transferred."

The district attorney claimed that the tax must be paid and if any part of it is shown to be illegal it might be refunded. But the court holds that this would place an unjust burden upon the estate; that the proceeding is fatally defective and that therefore the tax assessed cannot be collected. The court set aside the report of the appraiser and allowed an application to be made for a new appraisal. *In re Winter*, 21 Misc. Rep. 552, 48 N. Y. Suppl. 1097.

It was claimed that an order affirming the appraisal was made without notice. The court finds that it is sufficient that the appraiser was duly appointed and that he gave notice as required by law of the time and place the appraisal would be made. The court says that the beneficiary had a right of appeal from the decision of the surrogate. *In re Miller*, 110 N. Y. 216, 224, 18 N. E. 139, affirming 47 Hun 394.

### **On the Death of the Testator.**

Property should in general be valued as of the date of the death of the testator. *In re Davis*, 149 N. Y. 539, 547, 44 N. E. 185, affirming 91 Hun 53.

The report of an appraiser is defective in not stating the value of the property subject to tax on the date of the death of the testator. *In re Earle*, 74 N. Y. App. Div. 458, 77 N. Y. Suppl. 503, affirming 71 N. Y. Suppl. 1038.

### **Where Executor Disclaims Property.**

The surrogate has authority under the New York statute of 1892, chapter 399, section 11, to appoint an appraiser to appraise property adjudged to be subject to the will of a deceased person in an action between the heirs, although the executor had claimed that it was not a part of the estate as it had been given to a certain heir during the life of the decedent. *In re Lansing*, 31 Misc. Rep. 148, 64 N. Y. Suppl. 1125.

### **Only Property of Taxable Beneficiaries Included.**

It is the duty of an appraiser under the statute of 1885 to fix the value only of property of persons taking by succession from

the decedent and the appraisers need not fix the value of the whole estate of the testator. *In re Jones*, 5 Dem. Surr. (N. Y.) 30

### **Report to Subject After-discovered Property.**

In a report in a proceeding to subject after-discovered property to the payment of an inheritance tax, the report should clearly express that it embraces all other property which may be taxed at the date of the death of the testator. Where the surrogate signs a report defective in this particular, he has authority to vacate it and set it aside. *In re Earle*, 74 N. Y. App. Div. 458, 77 N. Y. Suppl. 503, affirming 71 N. Y. Suppl. 1038.

### **Postponement where Value of Property Unknown.**

Where the real estate of the testator consisted almost entirely of partnership property used in the prosecution of the lumbering and tannery business, and where the actual value of such real estate is dependent largely upon the manner in which it is controlled, it is impracticable to ascertain the value of such interests at present, but would seem to be a very proper case for postponing the assessment and collection of the tax to which the same might be subject until the parties entitled come into actual possession or enjoyment thereof. *In re Wheeler*, 1 Misc. Rep. 450, 22 N. Y. Suppl. 1075.

### **When Litigation over Title.**

Where litigation is threatened over the title to certain property it is proper not to impose a transfer tax upon it. *In re Newcomb*, 35 Misc. Rep. 589, 72 N. Y. Suppl. 58.

### **Evidence of Securities Owned.**

The testimony of one hostile witness that ten years before the death of the testator he was shown by the testator a box containing securities which the testator then stated amounted to \$420,000, and that five years prior to the death of the testator the witness was taken to a safe deposit vault and shown a box of securities which the testator stated were worth \$700,000, which the witness did not handle, estimate or count, is insufficient as a basis for inheritance tax proceedings. In addition to this, accounts with brokers and with a national bank showing considerable amounts of money passing through the account are insufficient especially where it appears that the testator was speculating in the stock market. *In re Kennedy*, 113 N. Y. App. Div. 4, 99 N. Y. Suppl. 72.

In estimating the value of the shares in a joint stock association for the purpose of the inheritance tax, the value of the real estate owned by the association should be taken into account notwithstanding it is compelled to pay a tax upon the same periodically. *In re Jones*, 28 Misc. Rep. 356, 59 N. Y. Suppl. 983.

### **Construction of Will.**

In proceedings for appraisal under the transfer tax act the will may be construed. *In re Peters*, 69 N. Y. App. Div. 465, 74 N. Y. Suppl. 1028.

### **CLAIMS.**

A claim of an estate on another estate which is in genuine litigation may be excluded from consideration for the purpose of the inheritance tax. *In re Skinner*, 106 N. Y. App. Div. 217, 94 N. Y. Suppl. 144, modifying 45 Misc. 559, 92 N. Y. Suppl. 972.

Where an administrator makes an honest and prudent compromise of a claim of the estate against another, the claim will not be appraised at a greater value than the compromise. *In re Thomas*, 39 Misc. Rep. 223, 79 N. Y. Suppl. 571.

### **Claims in Favor of Estate.**

Where the administrator had brought suit on a note made payable to the intestate, which the maker of the note claimed had been paid and litigation was still pending at the time of the appraisal, it was the duty of the surrogate to exclude this claim from the valuation at the time, reserving it for future appraisal in case the administrator succeeded in collecting it. *In re West-urn*, 152 N. Y. 93, 103, 46 N. E. 315, reversing 8 N. Y. App. Div. 59.

The question raised was whether a certain worthless account is to be deemed to be property transferred or disposed of by will within the contemplation of the statute and to be included in the value of the estate for the purpose of taxation.

The court holds that the tax is imposed upon the shares of the estate that the beneficiaries take under the will and the account or item in question does not represent any property that passed from the deceased to anyone within the fair meaning of the statute; hence the final order of the surrogate excluding the account from the estimated value of the estate was correct. *In re Manning*, 169 N. Y. 449, 62 N. E. 565, affirming 59 N. Y. App. Div. 624.

**Claim of Estate against Legatee.**

Where a bequest of the residue of an estate includes a note made by the residuary legatee, the legatee must either accept the benefit provided by the will under the condition of assuming with it the burden imposed by law, or he may reject it. If he elects to reject the legacy the legacy would go as in case of intestacy. In that event the next of kin could sue upon the note. The tax should properly include the value of this note. *In re Tuigg*, 15 N. Y. Suppl. 548, 2 Con. Surr. 633, following *Tyson's Appeal*, 10 Pa. St. 220.

**Claim against Beneficiary.**

Where the estate has a claim against a beneficiary but of a less amount than the beneficiary is entitled to under the will, the claim should be appraised. However a failure to appraise cannot be corrected by a proceeding to set aside the appraisal but only by appeal. *In re Smith*, 14 Misc. Rep. 169, 35 N. Y. Suppl. 701.

**Claim vs. Worthless Legatee.**

Where a testator held notes against certain relatives and by his will the notes and the amounts due thereon were given to the makers of the notes, and the directors were directed to cancel and surrender the notes to the makers without payment, the court holds that as the makers of the notes were insolvent it is fair to appraise the legacy as valueless. It was claimed that notwithstanding the insolvency of the makers inasmuch as the notes were given as legacies to the makers themselves they should be assessed at their fair value. But the court replies that under section 230 of the statute "fair market value" is the test. No such exception of cases where promissory notes are given to their makers is made by the statute. *Morgan v. Warner*, 162 N. Y. 612, 57 N. E. 1118, affirming 45 N. Y. App. Div. 424.

**Claim against Unsettled Estate of another Decedent.**

The testator died in 1874 leaving a will giving his wife one third of his property for life with remainder to his son and daughter and vesting in his widow the power to appoint remainders to such of his descendants as she might by will direct. The son died in 1879 leaving property to his mother for life, remainder to his sister, and the mother died in 1895 having exercised the power of appointment in favor of her daughter. The mother's will was admitted

to probate February 29, 1896, and the daughter died on that same day, and her will was admitted to probate in January, 1898, the daughter being a residuary legatee under the will of her mother.

The court holds that the two estates in remainder which vested absolutely in the daughter on the death of her mother under her father's and brother's wills were taxable in passing to the residuary legatee of the daughter.

It was also decided that the amount to which the daughter was entitled as a residuary legatee under her mother's will was not taxable, it appearing that there had been no settlement of the executor's accounts under the will, and consequently the amount of the residuary estate, if any there should be, was unascertained. But the court holds that when the estate of the mother is settled it will be the duty of the executor to see that the transfer tax is paid before distributing the residue to the legal representative of the daughter.

As to the two estates in remainder under the wills respectively of the father and brother of the daughter, the latter was vested with the title to the residue on the death of each testator, but possession and enjoyment were postponed until the falling in of the life estate, and when that event occurred the entire estate, legal and equitable, vested instantly in the remainderman. The executor of the daughter, under the circumstances, was liable to pay the transfer tax before he could distribute the personal property in his hands, or to the possession of which he was immediately entitled. *In re Rohan-Chabot*, 167 N. Y. 280, 283, 60 N. E. 598, affirming 44 N. Y. App. Div. 340.

## **TEST OF VALUE.**

### **Joint Interests.**

Where the testator and his brother had been doing business under an agreement dated 1877, reciting that the parties are "jointly" interested in firm property on the death of the intestate, the court on the evidence finds that the whole estate of the intestate is subject to the inheritance tax. *In re Wormser*, 28 Misc. 608, 59 N. Y. Suppl. 1088.

### **Good Will.**

The court holds that there was no authority for fixing the value of the good will in a business at the amount of the decedent's share of the profits of the business for the year immediately preceding.



The amount fixed by the agreement of the parties at the time must determine the value. What is to be determined is the value of the good will as of the time of the decedent's death. *In re Vivanti*, 138 N. Y. App. Div. 281, 122 N. Y. Suppl. 954, reversing 63 Misc. 618, 118 N. Y. Suppl. 680.

The court approves the suggestion that the proper rule for ascertaining the value of good will based on earnings would be to multiply the net earnings by a certain number of years, depending on the nature of the business, and where a net profit upon a comparatively small capital was about \$26,000 per annum and it was not a business that depended upon any special qualifications in the decedent, the court estimates the value at about three times the annual net profits. *In re Keahon*, 60 Misc. 508, 113 N. Y. Suppl. 926.

### Inactive Securities.

The statute of 1891, chapter 34, providing for appraisal of stocks customarily bought or sold in the open market, does not apply to a stock held largely by a private family with only a few sales of small lots. On this question expert witnesses are admissible. *In re Curtice*, 111 N. Y. App. Div. 230, 97 N. Y. Suppl. 444.

The value of stock not listed on the stock exchange is sufficiently shown by testimony of various purchases during the year, although the stock was very inactive and the sales infrequent. Evidence of sales for a reasonable time after as well as before the death of the testator is admissible. *In re Proctor*, 41 Misc. Rep. 79, 83 N. Y. Suppl. 643.

Where stock had no market value, as the corporation made porous plasters and medicines dependent on certain trade secrets, the earning power of the corporation is competent evidence of its value and is to be considered in determining the valuation to be placed upon the stock for the purposes of taxation. Where it is impossible for an appraiser to ascertain the market value of the stock of a corporation by reason of the fact that there is none, the state does not thereby lose the tax upon the transfer. The ownership of secret receipts is not tangible and is to some extent of uncertain and precarious value dependent upon the good faith of those who possess the secret. Still a large portion of their value lies in judicious advertising and in the name under which they have sold, and therefore these secret receipts are properly to be considered in estimating the value. *In re Brandreth*, 28 Misc. Rep. 468, 59 N. Y. Suppl. 1092.

**Sales.**

Where a manufacturing company paid eight per cent dividends during the first year of its incorporation its stock is not necessarily worth par in view of sales during the year at fifty dollars a share. *In re Smith*, 71 N.Y. App. Div. 602, 76 N.Y. Suppl. 185.

It appeared that the devisee of real property had sold it for the best price that she could obtain and therefore the court holds it unjust to fix the price much larger than that simply on account of the evidence of a real estate appraiser. *In re Arnold*, 114 N. Y. App. Div. 244, 99 N. Y. Suppl. 740, 37 Civ. Prod. Rep. 177.

The average sales of stock for the three months first prior to the decedent's death is a proper way to ascertain the value of the stock under the New York statute of 1891, chapter 34, section 1. *In re Crary*, 31 Misc. Rep. 72, 64 N. Y. Suppl. 566.

**Opinions.**

The executor was permitted to give his opinion on the value of certain notes in *Morgan v. Warner*, 162 N. Y. 612, 57 N. E. 1118, affirming 45 N. Y. App. Div. 424.

The declarations of the testator are not evidence as to the value of certain notes bequeathed. *Morgan v. Warner*, 162 N. Y. 612, 57 N. E. 1118, affirming 45 N. Y. App. Div. 424.

**Experts.**

Expert witnesses may be heard as to value of inactive securities. *In re Curtice*, 111 N. Y. App. Div. 230, 97 N. Y. Suppl. 444.

**Joint Stock Association Owning Real Estate.**

Where the testator bequeathed shares in a joint stock association and died in 1891, and where the N. Y. St. 1891, c. 215, did not levy a tax on a bequest of real estate to lineal descendants, the court holds that the real estate should be considered in appraising property. The real estate constituted a greater part of the assets of the association. The shares were not listed upon the stock exchange or sold in open market and the only way to get at their value was to ascertain the property they represented. *In re Jones*, 172 N. Y. 575, 586, 65 N. E. 570, 60 L. R. A. 476, reversing 69 N. Y. App. Div. 237, 74 N. Y. Suppl. 702.

**MARSHALING ASSETS.**

Marshaling securities for payment of indebtedness of non-resident to stock-brokers, see *post*, p. 949.

**Right of Executor to Elect to Pay Certain Legacies with New York Assets.**

A foreign executor may marshal the assets by paying legacies to collaterals or strangers out of assets in his jurisdiction and paying legacies to lineals out of assets in the jurisdiction where some of the personal property may happen to be, and thus escape a tax in New York. The property of which an English testator died possessed in Great Britain was largely in excess of the amount given by him in legacies and some portion of these legacies had already been paid from the English estate and the executor had declared his determination of appropriating that part of the testator's property to their payment so that the American estate should constitute the residuary estate disposed of by the will in favor of the testator's brothers.

"This he may rightly do and thus save the estate from the payment of the succession tax imposed by our laws. The fact of such an appropriation will, of course, appear upon his accounting. If the executor determines to pay the legacies from the English estate, the American estate is thereby freed from the burden of the special tax, the imposition of which depends upon the fact of a succession by the legatee to some property which is within the state. If the American estate is appropriated to persons who are within the excepted degrees of relationship to the testator, the right to claim the tax from the executor is gone. It does not lie with the officers of the state to say in such a case which part of the testator's property shall be appropriated to the payment of the legacies. The law is not arbitrary in its application. It is simply absolute in its requirements when the precise case arises which it was framed to meet; and where, as here, the case is not presented of an appropriation of any part of the American estate in payment of the legacies to the foreign legatees, this special tax law cannot and should not apply. To this view we are all the more disposed because to hold otherwise might be to subject this estate to taxation both in Great Britain and in this state. Such a result of a double taxation is one which the courts should incline to avoid whenever it is possible within reason to do so." *Per* Gray, J., in *In re James*, 144 N. Y. 6, 11, 38 N. E. 961, affirming 77 Hun 211, 27 N. Y. Suppl. 288, 6 Misc. 206.

Where property outside the state has been used by the executor in the exercise of his acknowledged right of election to pay the pecuniary legacies, where it has proved sufficient to pay all of them, and all property in this state passes to a residuary legatee who is in the class of persons taxable at one per cent, the tax must be imposed at that rate. (See, however, N. Y. St. 1908, c. 310, noted *post*, p. 939.) *In re Whiting*, 127 N. Y. Suppl. 960, reversing 113 N. Y. S. 941.

It was the practice under these decisions for the executor to file with the surrogate a formal election.

### **Administrator no Right to Elect.**

Where nine per cent of the decedent's total personal estate was in the state of New York, it is proper for the surrogate's court to deduct nine per cent of the debts and expenses of the estate of the non-resident decedent, and the balance is the net assets within this state. *In re Ramsdill*, 190 N. Y. 492, 493, 83 N. E. 584, reversing 119 N. Y. App. Div. 890.

Where the administrator of the foreign intestate elects to appropriate all the assets situated within the state of New York in payment of the distributive share of the intestate's brother, the court holds that this action cannot prevent the imposition of an inheritance tax in the state of New York. The court distinguishes the case of *In re James*, 144 N. Y. 6, as in that case the property was appropriated to the specific legacies and it was property which was in Great Britain and never came within the jurisdiction of New York. The persons entitled to the legacies could have compelled their payment out of the English fund without resort to the New York courts. In the case at hand the situation is radically different. Upon the intestate's death his estate passed *eo instanti* to the persons who, by virtue of the intestate law, were entitled thereto.

The New York statute involves a tax upon transfers based upon the portion of the estate found within our jurisdiction, but this is not a tax upon the specific property which passes. The right of the state to the tax is therefore coincident with the devolution of title or interest; and the right of the state to exact the tax as well as the obligation of the transferee to pay it depend not upon a formal, complete and immediate change of title or possession, but upon the instant right to a beneficial share or interest subject only to the due administration of the estate.

"When a specific foreign legatee of a foreign testator can obtain satisfaction of his legacy in a foreign jurisdiction, the executor cannot be compelled to pay such a legacy out of the assets within our jurisdiction. This is the necessary result of the practical and obvious distinction between testacy and intestacy as applied to this subject of taxation. If a specific legatee needs not the intervention of our laws or courts to obtain what comes to him under a foreign will through foreign assets in a foreign jurisdiction, our laws cannot coerce an executor into paying his legacy out of funds within our jurisdiction for the sole purpose of exacting a tax. But in a case of intestacy the rule is essentially different, because the distributee takes an undivided interest in the whole estate; and if part of it happens to be within our jurisdiction, he can only get his share of what is here under our laws and through our courts. This is the theory upon which the nephews and nieces of the intestate in the case at bar are clearly taxable under our statute." *Per* Werner, J., in *In re Ramsdill*, 190 N. Y. 492, 496, 83 N. E. 584, reversing 119 N. Y. App. Div. 890.

#### **Executor Presumed to Elect.**

The decedent was a resident of New Jersey leaving personal property in New York and also in New Jersey. The executor paid taxable legacies out of the New Jersey assets and distributed the New York assets among people of one per cent class who were not taxable at all, because the New York assets are less than ten thousand dollars in amount. The court holds that it was the legal right of the executor to elect to pay the taxable legacies out of the New Jersey assets and to distribute the New York assets to persons who under our law are exempt from any tax whatever. "It was his plain duty to exercise this right in the interests of parties claiming under the will as legatees, and he owed no duty to the state of New York to do anything different. He had this right of election until he had actually appropriated the New York assets to the payment of debts and legacies. There was no warrant of law to justify the appraiser in assuming that the taxable legacies would be paid *pro rata* out of both funds. The natural inference was that the assets would be marshaled in such a way as to require the smallest payment of tax, and if the intent of the executor was material to produce a different result, the burden of proving the fact rested upon the state and the executor should have been questioned upon the subject by the appraiser before the report was made." *Per* Thomas, S., in *In re McEwan*, 51 Misc. 455, 101 N. Y. Suppl. 733.

### The Act of 1908.

The act of 1908, c. 310, noted *ante*, p. 828, was passed in view of the Ramsdill case *supra*, p. 937, intending to make the practice the same for executors as for administrators. This act was incorporated in the Consolidated Laws of 1909 as section 220, subd. 3, and appears in the present act, *ante*, pp. 840, 841. The statute does away with marshaling.

Under the statute of 1908, chapter 310, the executors have no right to marshal assets by electing to appropriate New York assets to the payment of legacies exempt or taxable at the minimum rate leaving the payment of legacies at a higher rate from assets outside the state. The executor claimed that when he selected the securities in New York to pay the two legacies in question such securities became in effect as much "specifically bequeathed" as if named directly in the will. But the court holds that the will fixed the character of the legacies as general legacies and that the act of the executor could not change this character. *In re Porter*, 67 Misc. 19, 124 N. Y. Suppl. 676.

### ANNUITIES.

#### Value of Annuity.

A tax on an annuity as covered in section 230 of the New York statute should be ascertained by fixing the value under the insurance tables and then computing the amount of the transfer tax thereon, which becomes payable forthwith out of the fund set aside for creating the annuity. The method of returning to the estate the tax so paid by the trustees is as follows: "Take for illustration an annuitant whose probable duration of life is ten years. The trustees would deduct from each annual payment as made one-tenth of the tax and restore it to the residuary estate."

Where the death of the annuitant took place before the tax had been restored to the estate entirely, any portion of a transfer tax not restored to the estate by the process indicated at the time of the annuitant's death would be a loss which the estate must sustain. *In re Tracy*, 179 N. Y. 501, 509, 72 N. E. 519, reversing 87 N. Y. App. Div. 215.

#### Legacy for Care.

The direction by will that certain persons shall receive \$75 per month for caring for the brother of the testatrix is subject

to a tax at the rate of five per cent. *In re Eaton*, 55 Misc. 472, 106 N. Y. Suppl. 682.

### **Legacy Subject to Annuity.**

The personal property was limited on the life of the testator's widow subject to an annuity to be paid to his sister. It was claimed that from the life estate should be deducted the actual amount of principal necessary to produce annuities at the rate of five per cent per annum. The court, however, holds that the proper method is to treat the present values of the annuities as specific legacies bequeathed to the annuitants deducted from the residuary personal estate on the theory that the widow's life interest is limited on the remainder only. In effect her interest is ascertained to be the present value of the life estate in the entire fund less the present value of the annuities charged upon such fund. *In re Maresi*, 74 N. Y. App. Div. 76, 77 N. Y. Suppl. 76.

### **LIFE ESTATES.**

See notes to the acts of 1885 and 1892, *ante*, pp. 783, 810.

### **Life Estates not Ascertainable.**

Where a devise is made to two for life and to the survivor of them the remainder to the surviving children of M. and remainder in fee to the children of A. and W. if the latter have issue, the life estates of the first takers are alone taxable since it is impossible to tell which of the children of M. will take the second life estate; nor can it be known into what number of shares the estate in remainder will be divided. *In re Eldridge*, 29 Misc. Rep. 734, 62 N. Y. Suppl. 1026.

### **What is a Life Estate?**

Where property is left to the widow to be used and enjoyed and at her disposal during her life with bequests over of "that may remain" the widow has a life estate only with the power of disposition and followed by valid executory devises. *In re Cager*, 111 N. Y. 343, 19 N. Y. St. 497, 18 N. E. 866, affirming 46 Hun 657.

Under N. Y. St. 1896, c. 908, as amended by N. Y. St. 1899, c. 76, and N. Y. St. 1900, c. 658, under section 230, it is the duty of the executors and trustees to ascertain the value of the respective life estates and estates in remainder and having done this they

should compute the transfer tax and pay the same out of the property transferred. The result is that the life tenant loses during the continuance of his estate the interest upon the corpus of the trust so paid out and eventually the remainderman receives his estate diminished by the amount of said payment. The court is not concerned with the question of whether this works out justice as between the life tenant and the remainderman. The legislative intention is clear that the transfer tax shall be paid out of the corpus of the trust estate and not out of the income. The court remarks that *In re Vanderbilt*, 172 N. Y. 69, dealt only with the contingent remainder and is therefore not strictly in point, but that the principle announced therein is necessarily involved in life estates created by trusts. *In re Tracy*, 179 N. Y. 501, 509, 72 N. E. 519, reversing 87 N. A. App. Div. 215.

Where the life tenant died between the death of the original decedent and the appraisal under the transfer tax the life tenant's interest should be appraised not in accordance with the term of its actual duration, but in accordance with the provisions of the act requiring a valuation as of the date of the death, by the use of the annuity tables. *In re Jones*, 28 Misc. Rep. 356, 59 N. Y. Suppl. 983.

## **FUTURE, CONTINGENT OR DEFEASIBLE INTERESTS.**

### **Deduction for Postponing Payment.**

Legacies of five hundred dollars payable at the end of a year are not of the fair market or cash value of five hundred dollars, but they are of the value of that amount less the interest until payable. *In re Peck*, 9 N. Y. Suppl. 465, 24 Abb. N. Cas. 365, 2 Con. Surr. 201.

A money legacy of five hundred dollars is of the fair value of five hundred dollars under the New York statute of 1887 and the appraisers have no right to deduct five per cent from its face value on the ground that that is what it is worth to the legatee at the end of the year; so legacies of five hundred dollars each are subject to the tax. *In re Bird*, 32 N. Y. St. 899, 11 N. Y. Suppl. 895, 2 Con. Surr. 376.

### **Of Vested Remainder.**

A vested remainder after the death of the life tenant can be appraised on the death of the testator by ascertaining the value



of the life estate and deducting that from the value of the whole estate. *In re Lange*, 25 Misc. Rep. 466, 55 N. Y. Suppl. 750.

### **Where Remaindermen Known.**

Where the testator gave his property to his wife for life with remainder over, the persons to whom the property passes after the death of the life tenant are known, hence the entire estate was taxable at the death of the testator. *In re Runcie*, 36 Misc. Rep. 607, 73 N. Y. Suppl. 1120.

### **Vested Remainder.**

Where the testatrix devised property in trust, the income to be paid to the grandsons during the life of the sons and the grandsons to succeed to the estate on the sons' death if they should then be fifty years of age, the grandsons took a vested remainder on the death of the testatrix and hence such devise was taxable. *In re Sherman*, 30 Misc. Rep. 547, 63 N. Y. Suppl. 957.

### ***Effect of Omission from Appraisal on Death of Testator.***

Where a will left funds in trust to pay the income to a grandson after he reached the age of thirty, the appraiser did not appraise the interest of the grandson at the death of the testator. Subsequently, however, after he attained the age of thirty proceedings were brought to appraise his interest and it was claimed that the interest was actually vested from the death of the testator; that the order entered omitting to tax it then was in effect an adjudication that it was exempt. The court notes, however, that the first appraiser reported that these interests were not then taxable for the reason that their value could not then be ascertained and the ultimate legatees were indefinite and uncertain and the doctrine of *res judicata* has no application for there is not only no judgment of exemption but a specific postponement of the consideration of the matter. *In re Irwin*, 36 Misc. Rep. 277, 73 N. Y. Suppl. 415.

### **Contingent Remainders.**

See notes to the acts of 1885, 1892, and 1899, c. 76, *ante*, pp. 782, 808, 822.

The policy of the state toward contingent remainders was altered by the act of 1899, c. 76, which made the tax on contingent or defeasible estates accrue forthwith at the highest rate which would be possible on the happening of any contingency.

A transfer tax can be imposed before the vesting of the contingent estate. *In re Post*, 85 N. Y. App. Div. 611, 82 N. Y. Suppl. 1079.

Where the testator devised to her brother the use of her personal property with the right to use as much of the principal as was necessary for his maintenance, no transfer tax can be assessed upon the remainder as it is impracticable to appraise it until it is known what property will pass in remainder. *In re Babcock*, 81 N. Y. App. Div. 645, 81 N. Y. Suppl. 1117, affirming 37 Misc. Rep. 445, 75 N. Y. Suppl. 926.

Where a remainder is bequeathed to the issue of the life tenant and she has no issue this remainder interest is not now taxable since no transfer, defeasible or otherwise, has yet been made. But if any child of the life tenant is now in existence such child is now vested with an estate in such remainder, subject to be divested by his death prior to his mother, and also subject to open and let in after-born children, and the tax can now be imposed. *In re Clarke*, 39 Misc. Rep. 73, 78 N. Y. Suppl. 869.

#### *Contingency Extinguished before Death.*

Where remainders in trust estates were left to such of certain persons named as might survive the termination of the trust estates and one of these persons named died before the termination of the trust estate his estate was not subject to taxation. He never took anything beneficial under the will and his estate can take nothing. It was never intended by the law to tax a theory having no real substance behind it. What passed was rather a theoretical possibility than a tangible reality. *In re Curtis*, 142 N. Y. 219, 36 N. E. 887, affirming 73 Hun 185, 56 N. Y. St. 113, 25 N. Y. Suppl. 909.

#### *Where Testator Died before Statute Enacted.*

Where the testatrix died in 1883, leaving property to a life tenant with a contingent remainder over and the life tenant died in 1894, the court holds that the remainder is not taxable, following *In re Seaman*, 147 N. Y. 69, 41 N. E. 401. *In re Langdon*, affirming 153 N. Y. 6, 46 N. E. 1034, 11 N. Y. App. Div. 220, 43 N. Y. Suppl. 419.

#### **Defeasible Interest.**

Under the statute of 1896, section 230, providing that "where an estate for life or for years can be divested by the act or omission

of a legatee or devisee it shall be taxed as if there was no possibility of such divesting," the court holds that a bequest to the sister until her marriage or death unmarried should be taxed as a life estate. *In re Plum*, 37 Misc. Rep. 466, 75 N. Y. Suppl. 940.

Where a life estate is determinable upon the remarriage of the life tenant, on the remarriage of the life tenant the surrogate should instruct the appraiser to deduct from the principal fund the value of the estate of the widow during the term of her widowhood. *In re Sloane*, 154 N. Y. 109, 114, 47 N. E. 978, 19 N. Y. App. Div. 411, 46 N. Y. Suppl. 264.

### **Inequality in Rates on Remainders.**

The court suggests to the legislature that N. Y. St. 1899, c. 76, providing for the present appraisal and taxation of remainders causes an inequality which is an injustice on life estates. The tax on the remainders being paid out of the corpus of the estate diminishes the income of the life tenant by the interest on the amount of the tax; and if it is desired to make taxes on remainders payable immediately it would be fairer to the life tenant to have the tax assessed at the lowest rate on any succession provided for by the will. In case the remainder eventually vesting should prove taxable at a higher rate than such increased tax should be payable at the time of its enjoyment. The court remarks that its experience is that in the majority of cases the lowest rate of tax usually proves the final rate, and where the state imposes in the first instance a higher rate of tax it becomes obligated to repay the excess after a lifetime at six per cent interest, while it could borrow money at half that rate. *In re Brez*, 172 N. Y. 609, 611, 64 N. E. 958, reversing 69 N. Y. App. Div. 619.

### **Vested Remainder.**

The testator died in 1887 and an appraisal was made soon after his death. The testator devised to a life tenant and on his death to his issue and no appraisal was made of the remainder after the death of the life tenant. The life tenant died in 1892 leaving issue. The remainder vested in these remaindermen at the date of the death of the testator although the amount that the beneficiaries would receive could not be definitely ascertained until the death of the life tenant. Therefore the appraisal should be made

as of the date of the testator's death and on the value at that time. *In re Meyer*, 83 N. Y. App. Div. 381, 82 N. Y. Suppl. 329.

### **Remainder Assessed under Original Will.**

Where under a will the wife took a life estate with remainder over to the daughter the daughter took under the father's will and not through the mother, and as this estate has once paid the tax it is not subject to a second tax. *In re Whitney*, 124 N. Y. Suppl. 909.

### **Contingent Remainder. — Defeasible Interest.**

Formerly the tax on a contingent remainder or other indeterminate interest was assessed only when the interest vested in possession, but this rule was reversed by the statute of 1899, chapter 76, and now the tax on all such interests accrues on the death of the testator to be assessed at the highest rate possible in view of all the contingencies.

The legislature by the amendment of 1899 intended to change the law upon the subject and to make the transfer tax upon property transferred in trust payable forthwith. It is not required to be paid by the conditional transferee as it is to be paid out of the property transferred, so that whoever may ultimately take the property takes that which remains after the payment of the tax. It therefore contemplates defeasible transfers as well as absolute transfers. *In re Vanderbilt*, 172 N. Y. 69, 72, 64 N. E. 782, modifying 68 N. Y. App. Div. 27, 74 N. Y. Suppl. 450, followed in *In re Brez*, 172 N. Y. 609, 64 N. E. 958, reversing 69 N. Y. App. Div. 619.

### **EFFECT OF TRUSTS.**

#### **Where Decedent is only a Trustee.**

No inheritance tax should be levied where the decedent is merely a trustee. So where an executrix without authority purchases land in her own name the property is impressed with a trust in favor of the remaindermen, and on her death no inheritance tax should be levied as the fact that she took title in her own name did not make the property hers. *In re Wheeler*, 115 N. Y. App. Div. 616, 100 N. Y. Suppl. 1044.

Where the testatrix in the purchase of real estate used money which she held as executrix of the estate of another the legatees

may assert that they take this property under the will of the original testator who was their father and not under the will of the testatrix. *In re Wheeler*, 115 N. Y. App. Div. 616, 100 N. Y. Suppl. 1044.

The testator made deposits of money as trustee for his wife and children, each account being in his name as trustee for a particular person named. The testator had kept his wife and children advised of the deposits and the deceased declared to them his purpose in opening accounts and making the deposits, and often stated to the children that the funds set apart for them would belong to them at the age of twenty-one years.

The court holds that the trust became absolute and irrevocable during the lifetime of the donor and the mere fact that the accounts were not changed in form and the moneys paid over to the children at the age of twenty-one is not a controlling circumstance to show that the trust was merely tentative. *In re Pierce*, 132 N. Y. App. Div. 465, 116 N. Y. Suppl. 816, reversing 60 Misc. 25, 112 N. Y. Suppl. 594.

#### **Legatee's Interest Impressed with Trust.**

The testator died in 1890 giving a portion of the residue of her property to three men as tenants in common. Subsequently by an action for construction it was held by the court that this legacy was really in trust for certain purposes exempt from taxation. The court holds, however, that the right of the state to collect a tax was not concluded by the judgment of the supreme court, but that they might look also at the judgment in the court of appeals in the action for construction. The court finds that the court of appeals decided that the legatee took an absolute legacy and never became trustee for the brother; that he obtained under the will a legal title and that the equitable rights of the brother arose not under the will but from facts appearing extrinsic thereto. As no trust was imposed by the will the legacy was subject to tax although the legatee took it impressed with a trust in favor of his brother. *In re Edson*, 159 N. Y. 568, 54 N. E. 1092, affirming 38 N. Y. App. Div. 19, 56 N. Y. Suppl. 409.

A legacy to an executor individually under a contract with him to use the money for her brother creates a valid trust within the exemptions of the statute and the executor would therefore not be liable for the tax. *In re Farley*, 15 N. Y. St. Rep. 727.

Where the legatee was a trustee for a charity, no tax was levied in *In re Murphy*, 4 Misc. 230, 25 N. Y. Suppl. 107.

**DEBTS AND EXPENSES.**

Expense of monument and care of cemetery lot as funeral expenses, see pp. 895, 950.

Whether a bequest for masses is part of the funeral expenses, see p. 897.

**Authority to Consider Debts.**

The early construction of the statute followed strict lines to the effect that the appraiser has no right to hear evidence in regard to the debts of the deceased, the funeral expenses and the expenses of administration. *In re Ludlow*, 4 Misc. 594, 25 N. Y. S. 989; *In re Millward*, 6 Misc. Rep. 425, 27 N. Y. Suppl. 286.

This view was based on the absence of express authority in the statute to make such deductions, but did recognize authority in the surrogate to make the deductions. *In re Millward*, 6 Misc. Rep. 425, 27 N. Y. Suppl. 286.

The appraiser's functions have, however, since been broadened in scope by the construction of the statute, and it is now held that an appraiser may hear evidence in regard to the debts, funeral expenses and expenses of administration of an estate. *In re Wormser*, 36 Misc. Rep. 434, 73 N. Y. Suppl. 748.

Disbursements which it is admitted were made by the executor for debts must be allowed by the appraiser and it is error for him to reduce these amounts arbitrarily. *In re Dimon*, 82 N. Y. App. Div. 107, 81 N. Y. Suppl. 428.

**Expenses of Administration Deducted.**

The transfer tax is a tax not on the property of the estate but on the succession by the beneficiaries to the fortune of the deceased. Personal property does not pass directly from the deceased to the legatee or next of kin, but all that such legatee or next of kin takes is what may be coming to him from the estate on its distribution after settlement. The amount represented by the expenditures of the administrator or expense of administration never passes to the legatee or next of kin, therefore is not subject to the tax. The court distinguishes *In re Westurn*, 152 N. Y. 93. *In re Gihon*, 169 N. Y. 443, 62 N. E. 561, modifying 64 N. Y. App. Div. 504, 72 N. Y. Suppl. 1104.

**Estimate Unpaid Debts and Expenses of Administration.**

The court approves of the practice of estimating the unpaid debts and expenses of administration in so far as the estate has not

been administered at the time of the appraisal, provided the report and order of the appraisers reserve the right of those whose interests are assessed to a rebate in case it shall appear that the debts or expenses have been estimated too low, and a provision for a further assessment, though perhaps this is not strictly necessary, if they are estimated too high. *In re Dimon*, 82 N. Y. App. Div. 107, 81 N. Y. Suppl. 428.

### **Debts Secured by Mortgage.**

The court holds that in appraising the residuary personal property the principal of a bond not due signed by the decedent and secured by a mortgage upon his real estate should not be deducted before estimating the taxable value of the bequests. *In re Maresi*, 74 N. Y. App. Div. 76, 77 N. Y. Suppl. 76.

In determining that debts of the testator secured by mortgage on his real estate should not be deducted from the personal property, the court in *In re Sutton*, 3 N. Y. App. Div. 208, 212, affirmed 149 N. Y. 618, said:—

“It is of no importance to the executor or beneficiary, except for the purpose of determining the tax, from which fund the mortgages shall be paid; and they cannot be permitted to be paid from the personal estate for the sole purpose of increasing the exemption of real estate and decreasing the amount of the tax to be paid. The testator has transferred his whole estate as a single fund for the use and benefit of his children. In holding that for the purpose of determining the tax the real estate owned by the testator at the time of his death must be treated as such, we could not extend that exemption beyond the value of the testator's interest therein. It was such interest only that was transferred, and which will be held for the use of the beneficiaries, and such only that can be held to be exempt.” (This case was distinguished on account of the difference of the statute in *In re Fox*, 154 Mich. 5, 14, 159 Mich. 420.)

### **Direction to Pay Mortgages.**

Where the testator owned equities in real estate subject to mortgages and directed the executors to pay these mortgages, the court holds that this is an equitable conversion of the personal property into real property, and that therefore the appraiser had no right to deduct from the personal property the amount of the mortgages upon the real estate in fixing the fair market value of the

personal property. *In re Berry*, 23 Misc. Rep. 230, 51 N. Y. Suppl. 1132, 2 Gibbons 346. The court refuses to follow *In re Hopkins*, 57 Hun 9, 10 N. Y. Suppl. 264.

### **Debt of Non-resident Secured by Pledge.**

The testator, a resident of Illinois, at his death was the owner of bonds and stocks actually within the state of New York of corporations organized under the laws of New York state; and he also owned other personal property in New York, the aggregate value of all this property being about \$774,000. At the time of his death he was indebted to various persons in New York in the sum of something over \$800,000. That indebtedness was secured by a pledge of bonds actually located within the state worth \$20,000 and partly by a pledge of stock of various corporations incorporated under the laws of states other than the state of New York, the market value of such stocks being in excess of that amount of the whole indebtedness.

The court holds that for the purposes of taxation the testator's personal estate in New York amounted to \$744,000, from which should be deducted the expenses of administration, executor's commissions and debts to the amount of \$58,000, that being the value of the bonds and of the stock of New York corporations pledged as collateral security to the creditors in the city of New York.

It was claimed that inasmuch as the decedent at the time of his death was indebted to local creditors to an amount greater than the market value of the local assets, there was no property of the decedent within the state of New York subject to a transfer tax; and that all the local assets of the decedent were primarily liable for the payment of the indebtedness to local creditors to the entire extent of such property; and that the local assets to the amount of \$58,000, specifically pledged as collateral security for the payment of the indebtedness to local creditors are liable to be entirely used for the purpose of such payment.

Where the whole estate is within the state of New York and the decedent is a resident of the state undoubtedly debts are to be deducted from the value of the property, but in this case the indebtedness to the New York creditors is a general indebtedness against the whole estate. Here domestic creditors have in their hands legal title by a pledge and a right to resort for the payment of their debts to securities belonging to a non-resident decedent



which are not taxable under the laws of this state; and therefore the indebtedness due such creditors is not to be offset against the value of the property of such decedent otherwise taxable under the transfer law of the state. *In re Pullman*, 46 N. Y. App. Div. 574, 62 N. Y. Suppl. 395.

### **Burial Lot.**

The cost of a burial lot and fencing and sodding it should be deducted before assessing the inheritance tax. *In re Liss*, 39 Misc. Rep. 123, 78 N. Y. Suppl. 969.

### **Care of Burial Lot.**

A bequest of income for the maintenance of a burial plot should be looked upon as a personal expenditure for the benefit of the decedent and as part of the funeral expenses and therefore exempt. *In re Vinot*, 7 N. Y. Suppl. 517.

A bequest of a sum in trust for keeping a burial lot in condition and repair is reasonably a part of the funeral expenses. *In re Maverick*, 135 N. Y. App. Div. 44, 119 N. Y. Suppl. 914. The court distinguishes *In re Gould*, 156 N. Y. 423, 51 N. E. 287, and *In re McAvoy*, 112 N. Y. App. Div. 377, 98 N. Y. Suppl. 437, as in the Gould case the testator had made a large bequest to his son as a reward for faithful services, and in the McAvoy case the bequest was to pay for masses for others and the testator

### **Contested Claims against Estate.**

A claim in litigation should be referred to the appraiser to take evidence and report what, if any, rebate or deduction from the tax imposed should be made because of the claim. *In re Morgan*, 36 Misc. 753, 74 N. Y. Suppl. 478.

It was proper to withhold half the sum claimed by a claimant against the estate from appraisal and taxation. But it is better practice that the order determining the tax should contain an appropriate recital to the effect that the determination of the taxability of the sum claimed is suspended until the disposition of litigation. *In re Wormser*, 28 Misc. 608, 59 N. Y. Suppl. 1088.

The expenses of resisting a claim under an alleged contract under which claimant alleged that he was entitled to the whole estate should be deducted from the value of the estate for the purposes of the inheritance tax. *In re Sanford*, 66 Misc. 395, 123 N. Y. Suppl. 284.

**Compromise of Will Contest.**

Money paid to a niece under an agreement under which she withdrew objections to the probate of a will cannot be deducted as an expense of administration. The court distinguishes this case from a case where some claim is made against the estate which is compromised, as here the compromise did not change or affect the estate in any way. *In re Mark*, 40 Misc. Rep. 507, 82 N. Y. Suppl. 803.

*The expenses of a controversy among distributees* as to the proper distribution of an estate do not diminish the fund for inheritance taxation. *In re Sanford*, 66 Misc. 395, 123 N. Y. Suppl. 284.

**Commissions.***Broker's Commission.*

The commissions of a broker on sale of real estate should be paid as a necessary expense of administration. *In re Rothschild*, 63 Misc. 615, 118 N. Y. Suppl. 654.

*Executor's Commission.*

Where the estate in the hands of the executor increases in value so that the executor's commissions are increased, the increased commissions should be deducted from the inheritance tax, although the tax itself can be estimated only on the value of the property at the death of the testator. *In re Van Pelt*, 63 Misc. 616, 118 N. Y. Suppl. 655.

Where a will provided that no compensation or commission as such should be paid to any living executor or trustee for any services as executor or trustee, it was obvious that the testator intended that his estate should not be diminished by these ordinary expenses of administration, and it is clearly obvious that the legacies given to the executors were not given in lieu of commissions. The court, therefore, finds nothing to authorize the deduction from the total assessed value of the fees and commissions of executors and trustees. *In re Vanderbilt*, 68 N. Y. App. Div. 27, 74 N. Y. Suppl. 450.

*Commissions of Foreign Executor.*

In appraising the New York property of a resident of Pennsylvania, the appraiser should not deduct commissions to executors

which would be excessive under New York law in the absence of evidence of the Pennsylvania law on this subject. *In re Kennedy*, 20 Misc. Rep. 531, 46 N. Y. Suppl. 906, 2 Gibbons 220.

*Trustee's Commissions.*

Under the act of 1896, s. 227, the executors' commissions as trustees should be deducted in assessing the transfer tax. *In re Silliman*, 175 N. Y. 513, 67 N. E. 1090, affirming 79 N. Y. App. Div. 98, 80, N. Y. Suppl. 336, reversing 77 N. Y. Suppl. 267.

The commissions allowed by law to trustees for life tenants should be deducted from the valuation of the interest of the life tenants. *In re Gihon*, 169 N. Y. 443, 446, 62 N. E. 561, modifying 64 N. Y. App. Div. 504, 72 N. Y. Suppl. 1104.

The estimated commissions of trustees to whom a fund is turned over by the executor should not be deducted from the estate in estimating the value for purposes of the inheritance tax. The commissions of trustees form no part of the regular administration of the estate, but are an expense to be borne by the trust and its beneficiaries and cannot be deducted to reduce the tax due to the state. *In re Becker*, 26 Misc. Rep. 633, 57 N. Y. Suppl. 940.

**Taxes.**

*Tax Paid from Principal.*

The inheritance tax where property is bequeathed to trustees for a life tenant with remainder over should be paid from the corpus of the estate unless the will expressly provides that it shall be paid from the income. *In re Bass*, 57 Misc. 531, 109 N. Y. Suppl. 1084.

Where a legacy is given for a specified amount the tax must be deducted from the amount of the legacy and the balance only given to the legatee. A testator may direct that the tax on a particular legacy shall be paid out of his estate; nevertheless in reality the tax is still paid out of the legacy, the effect of the direction of the testator being merely to increase the legacy by the amount of the tax. *In re Gihon*, 169 N. Y. 443, 447, 62 N. E. 561, modifying 64 N. Y. App. Div. 504, 72 N. Y. Suppl. 1104.

*Direction for Payment without Deduction.*

A will provided that the executors were authorized and empowered to pay any or all of the legacies within one year after the decease of the testator "without any rebate or deduction

whatever." The will was executed in 1884, and the court holds that this clause can hardly have been intended to apply to a succession or legacy tax, although it was reaffirmed by a codicil executed after the passage of the statute. Apart from this the court holds that the words used would not have the effect of entitling the legatee to the legacy free of tax even if the will had been executed after the passage of the inheritance tax. The tax is paid on account of the legatee and in legal effect is precisely the same as if the legacy was to be paid over to the legatee intact, and then the tax was to be collected from him. Strictly speaking, therefore, the tax is not a "rebate or deduction" from the legacy. The tax is not a tax upon the estate or legacy devised or bequeathed but is a tax imposed upon the legatee for the privilege of succeeding to the property. It is merely for the convenience of the state to ensure certainty of collection of the duties cast upon the executors of paying the tax. *Jackson v. Tailer*, 41 Misc. Rep. 36, 83 N. Y. Suppl. 567.

#### *Federal Inheritance Tax.*

The amount paid on account of the federal inheritance tax cannot be deducted in fixing the valuation for the purpose of the New York transfer tax. It is not true that the federal taxes are payable primarily out of the estate; and the court finds that the federal tax is of exactly the same nature as the state tax and is a tax on property and not on succession. The federal tax is on the legacy and not on account of the estate.

The fact that this may result in great hardship does not alter the rule but results from the rate of taxation prescribed by the federal statutes. *In re Gihon*, 169 N. Y. 443, 62 N. E. 561, modifying 64 N. Y. App. Div. 504, 72 N. Y. Suppl. 1104, overruling 68 N. Y. Suppl. 381, 33 Misc. 206. *Contra*, *In re Vanderbilt*, 68 N. Y. App. Div. 27, 74 N. Y. Suppl. 450, relying on *In re Gihon*, 64 N. Y. App. Div. 504, 68 N. Y. Suppl. 381, 72 N. Y. Suppl. 1104.

The United States transfer tax should not be deducted from an estate before the assessment of the state tax upon it. The percentage fixed by the state for its own use cannot be diminished even by the law of the United States. The title and possession of property when transmitted upon the death of the owner are by consent of the state, not the United States. Therefore the percentage fixed for its own use cannot be diminished by even subtracting the tax fixed by the United States for war revenue. *In re Becker*,

26 Misc. Rep. 633, 57 N. Y. Suppl. 940; *In re Irish*, 28 Misc. Rep. 647, 60 N. Y. Suppl. 30; *In re Curtis*, 31 Misc. Rep. 83, 64 N. Y. Suppl. 574.

(The rule is otherwise in Massachusetts. See p. 567.)

*Legacy Tax of Another State.*

The decedent was a resident of Pennsylvania owning stock in New York corporations. The property in New York was in proportion to the entire estate as two to five and the appraiser deducted that proportion of the total debts, funeral and administrations expenses, from the taxable estate in this state; but he refused to deduct this proportionate sum from the amount of the legacy tax paid upon the entire estate in Pennsylvania.

The court holds that the fact that the Pennsylvania tax has been paid cannot be considered in assessing the New York tax. *In re Kennedy*, 20 Misc. Rep. 531, 46 N. Y. Suppl. 906, 2 Gibbons 220.

*Real Estate Taxes.*

Taxes on real estate which are a lien and payable at the time of the decedent's death should be deducted from the value of the estate in order to ascertain its net value, in proceedings under the transfer tax act. *In re Liss*, 39 Misc. Rep. 123, 78 N. Y. Suppl. 969.

Where the testator died January 30, 1900, the annual taxes for the year 1900 not assessed nor a lien nor payable at that time under the New York statute should not be deducted before the levying of the inheritance tax. *In re Maresi*, 74 N. Y. App. Div. 76, 77 N. Y. Suppl. 76.

Where the testator died December 9, 1895, the tax levied and becoming a lien on December 13, 1895, should be deducted from the valuation of the estate for the purposes of the inheritance tax, as the assessment had been made before that time and was binding upon him although the precise amount of the tax had not been ascertained until the warrants were delivered to the collectors. *In re Brundage*, 31 N. Y. App. Div. 348, 52 N. Y. Suppl. 362.

The testator died June 17, 1902, after the completion under the New York charter of the annual record of assessed valuations and subsequently to the time when application could be made for the correction, cancellation or revision of any assessment, but prior to the delivery of the assessment rolls by the board of taxes and assessment to the board of aldermen and prior to the extension

thereon of the amounts of the tax. The court holds that the case was within the spirit of *In re Babcock*, 115 N. Y. 450, 22 N. E. 263, and that the taxes for 1902 on both real and personal property should be deducted before an appraisal under the transfer tax act as they were debts against the estate. *In re Hoffman*, 42 Misc. Rep. 90, 85 N. Y. Suppl. 1082.

*Real Estate Taxes Paid by Stranger.*

Where a stranger paid taxes on land these payments should not be deducted from the valuation of the property transferred as these taxes were paid by a person not a party to the title and any payments made by him are rather in the character of a loan than of a payment which entitles him to a lien on the land. *In re Wood*, 123 N. Y. Suppl. 574.

*Tax Paid by Mistake.*

Where the executrix has paid a tax to the federal government which it now seems was not a proper charge against the estate, this should not be surcharged against the executrix where it is admitted that the sum may be recovered back. *In re Marx*, 117 N. Y. App. Div. 890, 103 N. Y. Suppl. 446, reversing 49 Misc. 280, 99 N. Y. Suppl. 334.

**Apportionment of Debts.**

The court holds that the deduction to be made for debts owing to non-resident creditors, mortuary expenses, commissions on property without the state and other administration expenses in respect to such property should be in proportion which the net New York estate, after all deductions are made for debts owing to resident creditors, New York commissions, and New York administration expenses, bears to the entire or gross estate wherever situated. *In re Porter*, 67 Misc. 19, 124 N. Y. Suppl. 676.

**Local Debts Set Off against Local Property of Non-resident.**

The property of a non-resident located within the state is not subject to taxation when it appears that his indebtedness to creditors who are residents of the state is in excess of the value of the testator's property within the state. The fact that to release the debts the executor brought money of the decedent from out of the state and paid the debts so that the securities in New York could be transmitted to be administered at the residence of the decedent cannot make any difference. *In re Grosvenor*, 124 N. Y. App. Div. 331, 108 N. Y. Suppl. 926.

The decedent, a resident of the state of Illinois, was a member of the partnership doing business in New York and in Chicago. The New York branch was mainly occupied with manufacturing and the Chicago branch in selling, and therefore the debts owing to the New York creditors exceeded the value of the New York assets; but that the firm did not owe the persons from whom it purchased the goods is immaterial as it did owe for discounts and loans effected, the proceeds of which were applied towards the purchase price of the property. Therefore, as debts in New York exhausted the value of the property here no tax could be imposed. *In re King*, 172 N. Y. 616, 64 N. E. 1122, affirming 71 N. Y. App. Div. 581, 76 N. Y. Supl. 220.

**S. 231. Determination of surrogate.** From such report of appraisal and other proof relating to any such estate before the surrogate, the surrogate shall forthwith, as of course, determine the cash value of all estates and the amount of tax to which the same are liable; or the surrogate may so determine the cash value of all such estates and the amount of tax to which the same are liable, without appointing an appraiser.

The superintendent of insurance shall, on the application of any surrogate, determine the value of any such future or contingent estates, income or interest therein limited, contingent, dependent or determinable upon the life or lives of persons in being, upon the facts contained in any such appraiser's report, and certify the same to the surrogate, and his certificate shall be conclusive evidence that the method of computation adopted therein is correct.

The surrogate shall immediately give notice, upon the determination by him as to the value of any estate which is taxable under this article, and of the tax to which it is liable, to all persons known to be interested therein, and shall immediately forward a copy of such taxing order to the state comptroller. The surrogate shall also forward to the state comptroller copies of all orders entered by him in relation to or affecting in any way the transfer tax on any estate, including orders of exemption.

If, however, it appear at any stage of the proceedings that any of such persons known to be interested in the estate is an infant or an incompetent, the surrogate may, if the interest of such infant or incompetent is presently involved and is adverse to that of any of the other persons interested therein, appoint a special guardian of such infant; but nothing in this provision shall affect the right of an infant over fourteen years of age or of any one on behalf of an infant under fourteen years of age to nominate and apply for the appointment of a special guardian for such infant at any stage of the proceedings.

[See notes to the act of 1885, c. 483, s. 13; 1887, c. 713; 1892, c. 399, s. 13; 1896, c. 908, s. 232; 1897, c. 284, s. 7; 1899, c. 672; 1901, c. 173, s. 7; 1905, c. 368.]

**S. 232. Appeal and other proceedings.** The state comptroller or any person dissatisfied with the appraisal or assessment and determination of tax may appeal therefrom to the surrogate within sixty days from the fixing.

assessing and determination of tax by the surrogate as herein provided, upon filing in the office of the surrogate a written notice of appeal, which shall state the grounds upon which the appeal is taken; but no costs shall be allowed by the surrogate on such appeal.

Within two years after the entry of an order or decree of a surrogate determining the value of an estate and assessing the tax thereon, the state comptroller may, if he believes that such appraisal, assessment or determination has been fraudulently, collusively or erroneously made, make application to a justice of the supreme court of the judicial district embracing the surrogate's court in which the order or decree has been filed, for a reappraisal thereof. The justice to whom such application is made may there upon appoint a competent person to reappraise such estate. Such appraiser shall possess the powers and be subject to the duties of an appraiser under section two hundred and thirty and shall receive compensation at the rate of five dollars per day for every day actually and necessarily employed in such appraisal. Such compensation shall be payable by the state comptroller or county treasurer out of any funds he may have on account of any tax imposed under the provisions of this article, upon the certificate of the justice appointing him. The report of such appraiser shall be filed with the justice by whom he was appointed, and thereafter the same proceedings shall be taken and had by and before such justice as are herein provided to be taken and had by and before the surrogate. The determination and assessment of such justice shall supersede the determination and assessment of the surrogate, and shall be filed by such justice in the office of the state comptroller, and a certified copy thereof transmitted to the surrogate's court of the proper county.

[See notes to the act of 1885, c. 483, s. 13; 1892, c. 399; 1896, c. 908, s. 232; 1899, c. 672; 1901, c. 173, s. 8; 1905, c. 368; 1908, c. 310.]

## **APPEAL.**

### **Nature.**

N. Y. St. 1896, c. 908, s. 231 and s. 232, provide for the action of the surrogate in a dual capacity. By section 231 he may act as a taxing officer or appraiser; and under section 232 any person dissatisfied with the appraisement or assessment may appeal to the surrogate. It was insisted that this practice was anomalous and unnecessary and that an appeal could be taken from the surrogate acting as appraiser directly to the appellate division. The court remarks that it is somewhat unusual that a judicial officer should sit in review of his own decision as an assessor, but finds that this practice is proper as the surrogate is a mere taxing officer or assessor when acting under section 231. *In re Costello*, 189 N. Y. 288, 82 N. E. 139, modifying 117 N. Y. App. Div. 807, 103 N. Y. Suppl. 6.

The function of an appraiser is somewhat similar to a jury called by the court in an equity case to aid its conscience. The whole matter is with the surrogate and continues with him until final



determination after appeal. The purpose of the appeal from the surrogate to the surrogate is not simply to review his former determination, but it is proper on the appeal to receive evidence that a certain transfer was made in contemplation of death, and that the property transferred should be included in the transfer tax. *In re Thompson*, 57 N. Y. App. Div. 317, 9 N. Y. Ann. Cas. 290, 68 N. Y. Suppl. 18.

### **Pleadings.**

Under New York statute of 1896, section 232, a notice of appeal must state the grounds of the appeal. *In re Stone*, 56 Misc. 247, 107 N. Y. Suppl. 385.

### **Grounds of Appeal Specified are Exclusive.**

An order fixing the transfer tax upon an estate is an entirety and the party claiming to be aggrieved thereby in taking an appeal should present upon that appeal every objection which he has to the order. It would lead to endless delay and confusion if he were permitted to take a separate appeal for each objection made to the order of the surrogate. The specification of one or more objections is deemed equivalent that the appellant regards the decree in all other respects correct. *In re Cook*, 194 N. Y. 400, 403, 87 N. E. 786, affirming 125 N. Y. App. Div. 114, 109 N. Y. Suppl. 417.

Where the time for appeal has gone by and subsequently a proceeding is commenced by new heirs claiming the estate and attempting to revoke the letters of administration already granted, the surrogate has jurisdiction under the notice of appeal already given to consider the new question arising; and is not excluded from doing so on the ground that it was not specified in the notice of appeal. *In re Westurn*, 152 N. Y. 93, 104, 46 N. E. 315, reversing 8 N. Y. App. Div. 59.

### **Filing Notice of Appeal.**

Under this section the appeal is taken out by filing in the office of the surrogate a notice of appeal, and to be effective such notice must be filed within sixty days from the assessing of the tax. Where the appellants did not file their notice of appeal in time it never became effective and the surrogate never acquired jurisdiction to hear it. *In re Seymour*, 128 N. Y. Suppl. 775.

**Service of Notice.**

The admission of service of the notice of appeal by the attorney of the state comptroller cannot be accepted as a waiver of default in appealing, for the validity of the appeal depended, not upon service of notice thereof upon the attorney, but upon timely filing of the notice in the surrogate's office. *In re Seymour*, 128 N. Y. Suppl. 775.

**Effect of Failure to Appeal.**

Failure to appeal from a notice assessing the tax will bar a party from claiming that the valuation is incorrect. *In re Hacket*, 14 Misc. Rep. 282, 35 N. Y. Suppl. 1051.

**Appeal by City Comptroller.**

The comptroller of the city of New York in 1900 was authorized to prosecute an appeal from the decision of the surrogate although the powers and duties in respect thereto devolved upon the state comptroller. Such condition would authorize a substitution of the state comptroller but until such substitution is had the appeal was properly prosecuted by the officer who instituted it. *In re Blackstone*, 171 N. Y. 682, affirming 69 N. Y. App. Div. 127.

**No Appeal from Penalty Imposed.**

A decree assessing taxes does not concern itself with the amount of interest or penalty, and therefore the penalty is not a proper ground of appeal. If the penalty is to be remitted a special application must be made to the surrogate. *In re De Graaf*, 24 Misc. Rep. 147, 53 N. Y. Suppl. 591, 2 Gibbons 516.

**Questions of Fact.**

The court of appeals refused to disturb the finding of the lower court on the ground that it involved simply a question of fact as to the effect of a certain deed. *In re Thorne*, 162 N. Y. 238, 56 N. E. 625, 44 N. Y. App. Div. 8, 60 N. Y. Suppl. 419.

**VACATING ASSESSMENT.****General Authority of Surrogate.**

A surrogate under the Code of Civil Procedure, section 2481, should open and vacate his judgment in a tax proceeding only as the same power would be exercised by a court of record. *In re Barnum*, 129 N. Y. App. Div. 418, 114 N. Y. Suppl. 33.

The surrogate has no authority to amend an order made in a transfer tax proceeding as he has no general powers or jurisdiction and the only authority is to be found in the act itself. The jurisdiction is special and specially conferred by the act. *In re Crerar*, 56 N. Y. App. Div. 479, 67 N. Y. Suppl. 795, 9 Ann. Cas. 101.

The surrogate has authority in a proper case to modify his amended order assessing a transfer tax. *In re Warren*, 62 Misc. 444, 116 N. Y. Suppl. 1034; *In re Silliman*, 175 N. Y. 513, 67 N. E. 1090, affirming 79 N. Y. App. Div. 98, 80 N. Y. Suppl. 336, reversing 77 N. Y. Suppl. 267.

### **Where Acts without Jurisdiction.**

The surrogate has power to modify his own decree where he acts beyond his jurisdiction without notice. *In re Backhouse*, 185 N. Y. 544, 77 N. E. 1181, affirming 110 N. Y. App. Div. 737, 96 N. Y. Suppl. 466.

The surrogate has the power to vacate a decree made by him without jurisdiction under the Code of Civil Procedure, section 2481, sub-division 6, even after the time for appeal has expired. He may therefore reverse an order including in the value of the estate certain United States bonds, as his order was to that extent a nullity. *In re Coogan*, 27 Misc. Rep. 563, 59 N. Y. Suppl. 111.

### **To Correct Clerical Errors.**

The surrogate may set aside an order imposing a transfer tax where evidence was furnished which is not contradicted that the transfer tax should not have been imposed, although if there is any question about it the surrogate instead of vacating the trial order, should have remitted the whole matter to the official appraiser to make the computation upon which the taxability of the property depends. *In re Cameron*, 181 N. Y. 560, 74 N. E. 1115, affirming 97 N. Y. App. Div. 436, 89 N. Y. Suppl. 977.

After the surrogate had determined the cash value of the estate subject to tax certain judgments on claims which the executor had denied were recovered. The court holds that the power of the surrogate to correct errors is limited to clerical errors or mistakes which do not involve questions of law. *In re Connelly*, 38 Misc. Rep. 466, 77 N. Y. Suppl. 1032.

The surrogate has power to modify his own decree, where it appears that the legatee died before the testator. *Morgan v. Cowie*, 49 N. Y. App. Div. 612.

### Not to Correct Errors of Law.

The surrogate's court has no authority to amend or correct an order assessing an inheritance tax where the order was claimed to be erroneous on the ground that it included certain United States bonds which were later decided to be exempt. The surrogate, Thomas, denies an application on the ground that his decision in *In re Earle*, 71 N. Y. Suppl. 1038, has been overruled by *In re Crerar*, 56 N. Y. App. Div. 479, 67 N. Y. Suppl. 795. *In re Von Post*, 35 Misc. 367, 71 N. Y. Suppl. 1039.

The surrogate's court under the Code of Civil Procedure, section 2481, sub-division 6, has no authority to vacate its decree fixing the tax on legacies simply on the ground that certain things were included and excluded erroneously on the appraisal, as this is not a clerical error, but an error of law within the section of the code. *In re Wallace*, 28 Misc. Rep. 603, 59 N. Y. Suppl. 1084.

The surrogate has no jurisdiction to pass an order that no transfer tax is legally payable on the securities and that the transfer tax thereon was erroneously made. The original order remained unreversed and unmodified and consequently had the same force prior to this attempt on the part of the surrogate to decree it erroneous. The court intimates that the surrogate had no power even to modify the original order as the time for appeal had expired. *In re Schermerhorn*, 38 N. Y. App. Div. 350, 57 N. Y. Suppl. 26.

Mere evidence of a sale of property after the appraisal lower than the appraised valuation does not give the surrogate power to modify his decree of appraisal. *In re Lowry*, 89 N. Y. App. Div. 226, 85 N. Y. Suppl. 924. See, however, *In re Fulton*, 30 Misc. Rep. 70, 62 N. Y. Suppl. 995.

### After Time for Appeal has Expired.

In those cases where the surrogate has authority to amend his own decree he may do so after the expiration of the time allowed for appeal. A decree assessing a tax made under the N. Y. St. 1899, c. 76, which was declared unconstitutional, may be vacated by the surrogate after the time for appeal has gone by. *In re Scrimgeour*, 175 N. Y. 507, 67 N. E. 1089, affirming 80 N. Y. App. Div. 388, 80 N. Y. Suppl. 636, 78 N. Y. Suppl. 971, 39 Misc. 128.

In the *Scrimgeour* case, 175 N. Y. 507, the tax was imposed under an unconstitutional provision of the statute, a fact which the blind report of the case conceals. *In re Backhouse*, 185 N. Y. 544, 77 N. E. 1181, affirming 110 N. Y. App. Div. 737.

Under the Code of Civil Procedure, section 1290, the surrogate's court has power to vacate or modify a decree in a proper case after two years from the final judgment. *In re Mather*, 41 Misc. Rep. 414, 84 N. Y. Suppl. 1105.

### **Oral Opinion.**

Where on an affidavit of the executor as to the assets the surrogate expresses the opinion orally that the estate is not subject to tax, but enters no order or judgment, the state is not barred from subsequently asking for an appraisal. *In re Schmidt*, 39 Misc. Rep. 77, 78 N. Y. Suppl. 879.

### **Power to Order Refund.**

Under section 225, the surrogate may correct an error in his order fixing the transfer tax within two years and the tax may be ordered refunded. *In re Willet*, 51 Misc. 176, 100 N. Y. Suppl. 850, affirmed 119 N. Y. App. Div. 119, 104 N. Y. Suppl. 1150.

So where by mistake the executor has omitted a debt of the decedent from the transfer tax the surrogate may amend his decree and order the excess refunded. *In re Campbell*, 50 Misc. 485, 100 N. Y. Suppl. 637. But the surrogate has no power to modify an order made within his jurisdiction and allow a partial refund simply because of a newly-discovered debt due by the estate after the time for appeal has expired. *In re Hamilton*, 41 Misc. Rep. 268, 84 N. Y. Suppl. 44.

The surrogate may refuse to insert in an order vacating an assessment a direction to the state comptroller to refund the amount of the tax. Such an order is entirely proper, but is not essential, as the statute itself commands the state comptroller to direct the treasurer of the county or the comptroller of the city of New York to refund. See section 225. *In re Cameron*, 181 N. Y. 560, 74 N. E. 1115, affirming 97 N. Y. App. Div. 436, 89 N. Y. Suppl. 977.

### **REAPPRAISAL.**

#### **New Appraisal Unwarranted.**

Where property was brought to the attention of the appraisers and is not included in the appraisal, a new appraisal under section 230 is not authorized on the ground that the property was omitted from the former appraisal. *In re Crerar*, 56 N. Y. App. Div. 479, 67 N. Y. Suppl. 795, 9 N. Y. Ann. Cas. 101.

Where an appraiser reports that remaindermen were indefinite and uncertain and that the tax could not then be determined and this report is confirmed in 1894, the court has no power to appoint another appraiser in 1898. The report was the final determination of the subject. *In re Lawrence*, 96 N. Y. App. Div. 29, 88 N. Y. Suppl. 1028.

### **Evidence Necessary for Rehearing.**

An appeal from the decree on appraisal cannot be sustained unless it appears that there is some definite evidence to be produced on a rehearing that would increase the valuation on stock claimed by the comptroller to be valued too low. *In re Johnson*, 37 Misc. Rep. 542, 75 N. Y. Suppl. 1046.

### **On Motion.**

A motion may be made to remit the report of an appraiser back to the appraisers before the court has acted upon it, for the introduction of additional proof. *In re Kelly*, 29 Misc. Rep. 169, 60 N. Y. Suppl. 1005.

*This remedy is not exclusive* but the taxpayer may appeal under the New York Code of Civil Procedure, section 2570, to the appellate division from the order of the surrogate's court approving the appraisal, *if he believes that such appraisal . . . has been fraudulently, collusively or erroneously made*. *Morgan v. Warner*, 162 N. Y. 612, 57 N. E. 1118, affirming 45 N. Y. App. Div. 424.

Some clear evidence of undervaluation must be produced before a reappraisal will be ordered. *Matter of Johnson*, 37 Misc. 542, 75 N. Y. S. 1046.

Where no appraisal is made at all for the reason that both appraiser and surrogate took the view which proved to be mistaken, that the bequest was not subject to tax, this is not within the statute and therefore a reappraisal cannot be had under this section, which applies only to errors of fact. *In re Niven*, 29 Misc. Rep. 550, 61 N. Y. Suppl. 956.

Reappraisements will not be ordered in the absence of evidence of mistake or fraud simply because at public auction the property was sold for a price exceeding the appraisal. *In re Bruce*, 59 N. Y. Suppl. 1083.

**S. 233. Composition of transfer tax upon certain estates.** The state comptroller, by and with the consent of the attorney general expressed in writing is hereby empowered and authorized to enter into an agreement with the trustees

of any estate in which remainders or expectant estates have been of such a nature, or so disposed and circumstanced, that the taxes therein were held not presently payable, or where the interests of the legatees or devisees were not ascertainable under the provisions of chapter four hundred and eighty-three of the laws of eighteen hundred and eighty-five; chapter three hundred and ninety-nine of the laws of eighteen hundred and ninety-two, or chapter nine hundred and eight of the laws of eighteen hundred and ninety-six, and the several acts amendatory thereof and supplemental thereto; and to compound such taxes upon such terms as may be deemed equitable and expedient; and to grant discharge to said trustees upon the payment of the taxes provided for in such composition, provided, however, that no such composition shall be conclusive in favor of said trustees as against the interest of such *cestuis que* trust as may possess either present rights of enjoyment, or fixed, absolute or indefeasible rights of future enjoyment, or of such as would possess such rights in the event of the immediate termination of particular estates, unless they consent thereto, either personally, when competent, or by guardian or committee. Composition or settlement made or effected under the provisions of this section shall be executed in triplicate, and one copy filed in the office of the state comptroller, one copy in the office of the surrogate of the county in which the tax was paid, and one copy delivered to the executors, administrators or trustees who shall be parties thereto.

[See notes to the acts of 1896, c. 908, s. 230; 1897, c. 284; 1899, c. 76; 1900, c. 379; 1901, c. 173, s. 9; 1905, c. 368, s. 233.]

**S. 234. Surrogates' assistants in New York, Kings and other counties.** The state comptroller may, upon the recommendation of the surrogate, appoint, and may at pleasure remove, assistants and clerks in the surrogate's offices of the following counties, at annual salaries to be fixed by him not to exceed the amounts hereinafter specified:—

1. In New York county, a transfer tax assistant, four thousand dollars; a transfer tax clerk, two thousand four hundred dollars; an assistant clerk, eighteen hundred dollars; a recording clerk, thirteen hundred dollars; a stenographer, eight hundred dollars; and shall be entitled to expend not more than seven hundred and fifty dollars a year in such office for expenses necessarily incurred in the assessment and collection of taxes under this article.

2. In Kings county, a transfer tax assistant, four thousand dollars; a transfer tax clerk, two thousand dollars; an assistant clerk, fifteen hundred dollars; and shall be entitled to expend not more than five hundred dollars a year for expenses necessarily incurred in the assessment and collection of taxes under this article.

3. In Erie county, a transfer tax clerk, eighteen hundred dollars.

4. In Westchester county, a transfer tax assistant, two thousand five hundred dollars.

5. In Albany county, a transfer tax clerk, twelve hundred dollars.

6. In Queens county, a transfer tax clerk, one thousand dollars.

7. In Onondaga county, a transfer tax clerk, twelve hundred dollars.

8. In Monroe county, two transfer tax clerks, seven hundred and fifty dollars each; and shall be entitled to expend not more than two hundred dollars a year for expenses necessarily incurred in the assessment and collection of taxes under this article.

9. In Dutchess county, a transfer tax clerk, nine hundred dollars.

10. In Oneida county, not more than two transfer tax clerks, twelve hundred dollars in the aggregate.

11. In Suffolk county, a transfer tax clerk, one thousand dollars.

12. In Ulster county, a transfer tax clerk, seven hundred and twenty dollars.

Such salaries and expenses shall be paid monthly by the state comptroller, upon proper vouchers, out of any funds in his hands on account of taxes collected under this article. (As amended by L. 1910, ch. 70.)

[See notes to the acts of 1885, c. 483, s. 13; 1892, c. 399, s. 17; 1896, c. 908, s. 233; 1896, c. 952; 1898, c. 289; 1899, c. 269; 1899, c. 270; 1899, c. 389; 1899, c. 406; 1901, c. 173, s. 10; 1901, c. 288; 1902, c. 283; 1905, c. 368; 1906, c. 699; 1908, c. 312; 1910, c. 70.]

**S. 235. Proceedings by district attorneys.** If, after the expiration of eighteen months from the accrual of any tax under this article, such tax shall remain due and unpaid, after the refusal or neglect of the persons liable therefor to pay the same, the state comptroller shall notify the district attorney of the county, in writing, of such failure or neglect, and such district attorney shall apply to the surrogate's court for a citation, citing the persons liable to pay such tax to appear before the court on the day specified, not more than three months after the date of such citation, and show cause why the tax should not be paid. The surrogate, upon such application, and whenever it shall appear to him that any such tax accruing under this article has not been paid as required by law, shall issue such citation, and the service of such citation, and the time, manner and proof thereof, and the hearing and determination thereon and the enforcement of the determination or order made by the surrogate shall conform to the provisions of the code of civil procedure for the service of citations out of the surrogate's court, and the hearing and determination thereon and its enforcement so far as the same may be applicable. The surrogate or his clerk shall, upon request of the district attorney or the state comptroller, furnish, without fee, one or more transcripts of such decree, which shall be docketed and filed by the county clerk of any county of the state without fee, in the same manner and with the same effect as provided by law for filing and docketing transcripts of decrees of the surrogate's court. The costs awarded by any such decree after the collection and payment of the tax to the state comptroller or county treasurer may be retained by the district attorney for his own use. Such costs shall be fixed by the surrogate in his discretion, but shall not exceed in any case where there has not been a contest, the sum of one hundred dollars, or where there has been a contest, the sum of two hundred and fifty dollars. Whenever the surrogate shall certify that there was probable cause for issuing a citation and taking the proceedings specified in this section, the state comptroller, after the same shall have been audited by him, shall pay all expenses incurred for the service of citations and other lawful disbursements not otherwise paid, from funds in his hands on account of such tax, or in a county in which the office of appraiser is not salaried by a warrant upon the county treasurer of such county for the payment by him of the same from funds in his hands on account of such tax. In proceedings to which the state comptroller is cited as a party under sections two hundred and twenty-eight and two hundred and thirty of this article, he is authorized to designate and retain counsel to represent him and to pay the expenses thereby incurred out of the funds which may be in his hands on account of this tax in any case in a



county where the office of appraiser is salaried, and in any other county the state comptroller shall by warrant direct the county treasurer to pay such expenses out of any funds which may be in his hands on account of this tax, provided, however, that in the collection of taxes upon estates of non-resident decedents the state comptroller shall not allow for legal services up to and including the entry of the order of the surrogate fixing the tax a sum exceeding ten per centum of the taxes and penalties collected.

[See notes to the acts of 1885, c. 483, ss. 16, 17; 1892, c. 399, ss. 11, 12; 1896, c. 908, s. 235; 1901, c. 173, s. 11; 1905, c. 368; 1908, c. 310.]

### **Burden of Proof.**

The state has the burden of proving that the transfer tax should be imposed. *In re Miller*, 77 N. Y. App. Div. 473, 78 N. Y. Suppl. 930, overruling 75 N. Y. Suppl. 929.

### **Evidence of Legatee.**

A legatee is not barred by the code of civil procedure, section 829, from testifying as to his conversations and relations with the decedent or to show that the mutually acknowledged relation of a parent existed. The code of civil procedure, section 829, provided that a party shall not be exempt as a witness in his own behalf as to any communication or personal transaction with a deceased person. *In re Brundage*, 31 N. Y. App. Div. 348, 52 N. Y. Suppl. 362. *In re Bentley*, 31 Misc. Rep. 656, 66 N. Y. Suppl. 95.

### **Parties to Action to Enforce Ante-nuptial Contract.**

The state comptroller was not a necessary party to an action for the specific performance of an ante-nuptial contract. *In re Kidd*, 115 N. Y. App. Div. 205, 100 N. Y. Suppl. 917, reversed on another point in 188 N. Y. 274, 80 N. E. 924.

**S. 236. Receipts from county treasurer or comptroller.** One of the duplicate receipts issued for the payment of any tax under this article, as provided by section two hundred and twenty-two, shall be countersigned by the state treasurer if the same was issued by the state comptroller, and by the state comptroller, if issued by any county treasurer. The officer so countersigning the same shall charge the officer receiving the tax with the amount thereof and affix the seal of his office to the same and return to the proper person; but no executor, administrator or trustee shall be entitled to a final accounting of an estate in settlement of which a tax is due under the provisions of this article unless he shall produce a receipt so sealed and countersigned, or a certified copy thereof. Any person shall, upon the payment of fifty cents to the officer issuing such receipt, be entitled to a duplicate thereof, to be signed, sealed and countersigned in the same manner as the original.

Any person shall, upon the payment of fifty cents, be entitled to a certificate of the state comptroller that the tax upon the transfer of any real estate of which any decedent died seized has been paid, such certificate to designate the real property upon which such tax is paid, the name of the person so paying the same, and whether in full of such tax. Such certificate may be recorded in the office of the county clerk or register of the county where such real property is situate, in a book to be kept by him for that purpose, which shall be labeled "transfer tax."

[See notes to the acts of 1885, c. 483, ss. 8, 23; 1892, c. 399, ss. 3, 16; 1896, c. 908, s. 222; 1901, c. 173, s. 11; 1905, c. 368, s. 236.]

**S. 237. Fees of county treasurer.** The treasurer of each county in which the office of appraiser is not salaried shall be allowed to retain, on all taxes paid and accounted for by him each fiscal year under this article, five per centum on the first fifty thousand dollars, two and one-half per centum on the next fifty thousand dollars, and one per centum on all additional sums. Such fees shall be in addition to the salaries and fees now allowed by law to such officers.

[See notes to the acts of 1885, c. 483, s. 22; 1887, c. 713; 1892, c. 399, s. 17; 1896, c. 908, s. 237; 1898, c. 289; 1901, c. 173, s. 12; 1905, c. 368; 1908, c. 310.]

**S. 238. Books and forms to be furnished by the state comptroller.** The state comptroller shall furnish to each surrogate a book, which shall be a public record, and in which he shall enter the name of every decedent upon whose estate an application to him has been made for the issue of letters of administration, or letters testamentary, or ancillary letters, the date and place of death of such decedent, the estimated value of his real and personal property, the names, places of residence and relationship to him of his heirs-at-law, the names and places of residence of the legatees and devisees in any will of any such decedent, the amount of each legacy and the estimated value of any real property devised therein, and to whom devised. These entries shall be made from the data contained in the papers filed on any such application, or in any proceeding relating to the estate of the decedent. The surrogate shall also enter in such book the amount of the personal property of any such decedent, as shown by the inventory thereof when made and filed in his office, and the returns made by any appraiser appointed by him under this article, and the value of annuities, life estates, terms of years, and other property of any such decedent or given by him in his will or otherwise, as fixed by the surrogate, and the tax assessed thereon, and the amounts of any receipts for payment of any tax on the estate of such decedent under this article filed with him. The state comptroller shall also furnish to each surrogate forms for the reports to be made by such surrogate, which shall correspond with the entries to be made in such book.

[See notes to the acts of 1885, c. 483, s. 20; 1892, c. 399, s. 18; 1896, c. 908, s. 238; 1905, c. 368.]

**S. 239. Reports of surrogate and county clerk.** Each surrogate shall, on January, April, July and October first of each year, make a report, upon the forms furnished by the comptroller containing all the data and matters required to be entered in such book, which shall be immediately forwarded to the state

comptroller. The county clerk of each county, except in the counties where the registers perform the duties of the county clerk with respect to the recording of deeds, and when in such counties the registers, shall, at the same times, make reports containing a statement of any deed or other conveyance filed or recorded in his office, of any property, which appears to have been made or intended to take effect in possession or enjoyment after the death of the grantor or vendor, with the name and place of residence of such grantor or vendor, the name and place of residence of the grantee or vendee, and a description of the property transferred, which shall be immediately forwarded to the state comptroller.

[See notes to the acts of 1885, c. 483, s. 18; 1892, c. 399, s. 19; 1896, c. 908, s. 239; 1901, c. 173, s. 13; 1905, c. 368.]

**S. 240. Reports of county treasurer.** Each county treasurer in a county in which the office of appraiser is not salaried shall make a report, under oath, to the state comptroller, on January, April, July and October first of each year, of all taxes received by him under this article, stating for what estate and by whom and when paid. The form of such report may be prescribed by the state comptroller. He shall, at the same time, pay the state treasurer all taxes received by him under this article and not previously paid into the state treasury, and for all such taxes collected by him and not paid into the state treasury within thirty days from the times herein required, he shall pay interest at the rate of ten per centum per annum.

[See notes to the acts of 1885, c. 483, s. 21; 1892, c. 399, s. 20; 1896, c. 908 s. 240; 1901, c. 173, s. 13; 1905, c. 368.]

**S. 241. Report of state comptroller: payment of taxes.** The state comptroller shall deposit all taxes collected by him under this article in a responsible bank, banking house or trust company in the city of Albany, which shall pay the highest rate of interest to the state for such deposit, to the credit of the state comptroller on account of the transfer tax. And every such bank, banking house or trust company shall execute and file in his office an undertaking to the state, in the sum, and with such sureties, as are required and approved by the comptroller, for the safe keeping and prompt payment on legal demand thereof of all such moneys held by or on deposit in such bank, banking house or trust company, with interest thereon on daily balances at such rate as the comptroller may fix. Every such undertaking shall have indorsed thereon, or annexed thereto, the approval of the attorney general as to its form. The state comptroller shall on the first day of each month make a verified return to the state treasurer of all taxes received by him under this article, stating for what estate, and by whom and when paid; and shall credit himself with all expenditures made since his last previous return on account of such taxes, for salary, refunds or other purposes lawfully chargeable thereto. He shall on or before the tenth day of each month pay to the state treasurer the balance of such taxes remaining in his hands at the close of business on the last day of the previous month, as appears from such returns. (Former sec. 240 a without change.)

[See notes to the acts of 1901, c. 173, s. 14; 1905, c. 368, s. 240 a; 1906, c. 111; 1909, c. 62, s. 241.]

**S. 242. Application of taxes.** All taxes levied and collected under this article when paid into the treasury of the state shall be applicable to the expenses of the state government and to such other purposes as the legislature shall by law direct. (Former sec. 241 without change.)

[See notes to the acts of 1885, c. 483, s. 24; 1892, c. 399, s. 21; 1896, c. 908, s. 241; 1901, c. 173, s. 15; 1905, c. 368; 1909, c. 62.]

**S. 243 (as amended by St. 1911, c. 732, in effect July 21, 1911). Definitions.** The words "estate" and "property," as used in this article, shall be taken to mean the property or interest therein passing or transferred to individual or corporate legatees, devisees, heirs, next of kin, grantees, donees or vendees, and not as the property or interest therein of the decedent, grantor, donor or vendor and shall include all property or interest therein, whether situated within or without this state. The words "tangible property" as used in this article shall be taken to mean corporeal property such as real estate and goods, wares and merchandise, and shall not be taken to mean money, deposits in bank, shares of stock, bonds, notes, credits or evidences of an interest in property and evidences of debt. The words "intangible property" as used in this article shall be taken to mean incorporeal property, including money, deposits in bank, shares of stock, bonds, notes, credits, evidences of an interest in property and evidences of debt. The word "transfer," as used in this article, shall be taken to include the passing of property or any interest therein in the possession or enjoyment, present or future, by inheritance, descent, devise, bequest, grant, deed, bargain, sale or gift, in the manner herein prescribed. The words "county treasurer" and "district attorney," as used in this article, shall be taken to mean the treasurer or the district attorney of the county of the surrogate having jurisdiction as provided in section two hundred and twenty-eight of this article. The words "the intestate laws of this state," as used in this article, shall be taken to refer to all transfers of property, or any beneficial interest therein, effected by the statute of descent and distribution and the transfer of any property, or any beneficial interest therein, effected by operation of law upon the death of a person omitting to make a valid disposition thereof, including a husband's right as tenant by the curtesy or the right of a husband to succeed to the personal property of his wife who dies intestate leaving no descendants her surviving.

[See notes to the acts of 1892, c. 399, s. 22; 1896, c. 908, s. 242; 1898, c. 88; 1901, c. 173, s. 16; 1905, c. 368; 1909, c. 62, s. 243; 1910, c. 70.]

**S. 244. Exemptions in article one not applicable.** The exemptions enumerated in section four of this chapter shall not be construed as being applicable in any manner to the provisions of this article. (Former sec. 243 without change of substance.)

[See notes to the act of 1900, c. 382; 1905, c. 368.]

**S. 245. Limitation of time.** The provisions of the code of civil procedure relative to the limitation of time of enforcing a civil remedy shall not apply to any proceeding or action taken to levy, appraise, assess, determine or enforce the collection of any tax or penalty prescribed by this article, and this section

shall be construed as having been in effect as of date of the original enactment of the inheritance tax law, provided, however, that as to real estate in the hands of bona fide purchasers, the transfer tax shall be presumed to be paid and cease to be a lien as against such purchasers after the expiration of six years from the date of accrual. (Part of former article 13, sec. 282.)

[See notes to the act of 1899, c. 737; 1905, c. 368; 1909, c. 60.]

### Statute of Limitations.

The testator died in 1888 and it was claimed that proceedings begun later were barred through the operation of the code of civil procedure, section 382, sub-division 2, which fixes a limitation of six years upon an action to recover a statutory liability. The court holds, however, that the statute of 1899, chapter 737, relieved this bar and was retroactive. *In re Strang*, 117 N. Y. App. Div. 796, 102 N. Y. Suppl. 1062.

N. Y. St. 1887, c. 713, s. 17, authorizing the issue of a citation to show cause after a refusal or neglect to pay the inheritance tax means that no proceedings can be instituted to enforce the tax within eighteen months in view of section 4. And where a proceeding is begun within that time no costs should be allowed against the taxpayer. *Frazer v. People*, 3 N. Y. Suppl. 134, 6 Dem. Surr. 174.

The testator died in 1893 when there was a limitation of eighteen months for the payment of the inheritance tax. This limitation was withdrawn by the statute of 1899, chapter 737, providing that the limitation should be no defence to a proceeding to collect a transfer tax.

The court holds that a proceeding begun in 1902 is not barred. *In re Moench*, 39 Misc. Rep. 480, 80 N. Y. Suppl. 222.

### FORMS.

The following form of return was issued by the office of the tax commissioner under the act of 1910 to foreign executors:—

SURROGATE'S COURT,  
NEW YORK COUNTY.

IN THE MATTER  
of the  
Transfer Tax upon the Estate of  
Deceased.

AFFIDAVIT FOR  
APPRAISAL.

STATE OF  
COUNTY OF

} ss.

....., being duly sworn deposes  
and says:

I. That he resides at.....

II. That said decedent died on the..... day of  
....., a resident of.....  
State of....., leaving a last will and testament  
which was duly admitted to probate by the.....  
....., State of.....  
on the..... day of.....

III. That deponent was appointed <sup>sole</sup> executor of said will, has duly  
an  
qualified and is now acting as such executor.

IV. That hereto annexed and made a part hereof is an itemized statement  
marked "A," of all the property, real and personal, of which said decedent died  
seized and possessed, situated within the State of New York, and an itemized  
statement, marked "B," of all the personal property situated without the State  
of New York.

V. That at the time of h death, decedent had no safe deposit box, no  
bonds, public or private, no mortgages and no money within the State of New  
York; he had no interest in any business or co-partnership carried on therein;  
he owned no shares of stock in National Banks situated therein and owned no  
shares of stock in corporations organized and existing under the laws of the State  
of New York, physically located either within or without said State; he had no  
interest in the estate of a New York resident; he had no claims against, and there  
were no debts due and owing h from residents of the State of New York; he  
had no deposits in banks, trust companies or savings banks in the State of New  
York in h own name, jointly or in trust; he owned no jewelry, horses, carriages  
or furniture; and was possessed of no other personal property of any kind whatso-  
ever in said State except as set forth in Schedule "A."

VI. That the decedent at the time of h death owned no real estate situ-  
ated within the State of New York.

VII. That prior to h death decedent made no transfer of property in the  
State of New York by deed, grant, bargain, sale or gift in contemplation of death  
or intended to take effect at or after death; that the decedent had no power of  
appointment over property, real or personal, located therein.

VIII. That the fair market value of the entire personal estate of said decedent at the time of his death, wheresoever situated, was the sum of .....\$.....

That the funeral expenses of said decedent amounted to the sum of .....\$.....

That the debts itemized in a statement hereto annexed, marked "C," due and owing by decedent at the time of his death, exclusive of funeral expenses, mortgages on real estate, inheritance taxes paid to the United States Government, or to any Foreign or State Government, or loans secured by collateral, amount to the sum of .....\$.....

That the administration expenses incurred and to be incurred, itemized in a statement hereto annexed, marked "D," exclusive of expenses in the preceding paragraphs, amount to the sum of .....\$.....

That the commissions allowed me as executor amount to the sum of .....\$.....

IX. That annexed hereto, marked Schedule "E" and made a part hereof is a true copy of said decedent's last will and testament.

X. That all the parties in interest are alive, of full age and sound mind, unless otherwise stated in the following paragraph.

XI. That all the persons who are entitled to share in the estate of said decedent, their addresses, ages of life tenants, the amounts of their respective shares and their relationship to decedent, are as follows: —

<i>Name and Relationship.</i>	<i>Ages of Life Tenants.</i>	<i>Address.</i>	<i>Amount or Share.</i>
.....	.....	.....	.....
.....	.....	.....	.....

Sworn before me this .....  
day of .....

Attach  
County Clerk's  
Certificate.

SCHEDULE "A."  
Property within the State of New York.

SCHEDULE "B."  
Property outside the State of New York.

SCHEDULE "F."  
List of debts owing to residents  
of the State of New York.

## NORTH CAROLINA.

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### In General.

North Carolina had a collateral inheritance tax from 1847 to 1874. A modest tax was imposed on both direct and collateral inheritances in 1897. In 1901 the rates were substantially increased and made progressive with a maximum of 15 per cent. This enactment was much more radical than that adopted by any of the other states up to that time, but almost duplicated the national inheritance tax of 1898, which was then in force. The exemption applies to each individual share and not to the estate as a whole.

North Carolina taxes stock in a North Carolina corporation owned by a non-resident. It holds the corporation responsible if it permits the transfer of such stock before the tax is paid. The statute applies to the transfer by the corporation of bonds as well, but no tax is being collected on bonds of North Carolina corporations owned by non-residents.

### List of Statutes.

1847.	Statutes of North Carolina, c. 72, p. 139.
1848-49.	" " " " c. 81.
1851.	Tredell's Digested Manual, p. 259, ss. 1-7.
1855.	Statutes of North Carolina, c. 37.
1855.	Revised Code of North Carolina, c. 99, ss. 7-19.
1856-57.	Statutes of North Carolina, c. 34.
1858-59.	" " " " c. 25.
1860-61.	" " " " c. 32.
1861.	2d extra session, c. 31.
1862-63.	Adjourned session, c. 70.
1864-65.	Statutes of North Carolina, c. 27.
1866.	" " " " c. 21.
1866-67.	" " " " c. 72.
1868-69.	" " " " c. 108.
1869-70.	" " " " c. 229.
1870-71.	" " " " c. 227.
1871-72.	" " " " c. 58.
1872-73.	" " " " c. 144.
1873.	Battle's Revisal, c. 102.
1873-74.	Statutes of North Carolina, c. 134.
1883.	Code of 1883, s. 3867.



- 1897. Statutes of North Carolina, c. 168, s. 41.
- 1901. " " " " c. 9, p. 123, ss. 12-27.
- 1903. See revenue act of 1903, c. 247, ss. 6-21.
- 1905. Statutes of North Carolina, c. 588, p. 614.
- 1905. Revisal of 1905, vol. 2, c. 110, ss. 5111-5126.
- 1907. Statutes of North Carolina, c. 256, ss. 6-21.
- 1908. Pell's Revisal, vol. 2, ss. 5111-5126.
- 1909. Statutes of North Carolina, c. 438, ss. 6-21.
- 1911. " " " " c. 46, ss. 6-21.

### Constitutional Limitations.

#### North Carolina Constitution, 1876, a. 5, s. 3.

Laws shall be passed taxing, by a uniform rule, all moneys, credits, investments in bonds, stocks, joint-stock companies, or otherwise; and, also, all real and personal property, according to its true value in money. The general assembly may also tax trades, professions, franchises, and incomes, provided that no income shall be taxed when the property from which the income is derived is taxed.

#### Nature of Tax.

The legacy tax under N. C. St. 1869-70 is not a tax on property, but is rather a tax imposed on a succession; on the right of the legatee to take under the will, or of a collateral distribution in the case of intestacy. It cannot be held that the tax is a tax on property, merely because the amount of the tax is measured by the value of the property. *Pullen v. Commissioners*, 66 N. C. 361.

The succession tax is based on two principles. First, that a succession tax is a tax upon the right of succession to property and not on the property itself. Second, that the right to take property by devise or descent is not one of the natural rights of man, but is a creature of the law. *In re Morris*, 138 N. C. 259, 50 S. E. 682.

#### History.

"The inheritance or succession tax is of very ancient origin. It is no new invention of the legislative power for the purpose of putting money in the public coffers. Gibbon, the historian, traces its origin to the Emperor Augustus, and says it was suggested by him to the senate as a means of supporting the Roman army; that it was imposed at the rate of 5 per cent upon all legacies or inheritance above a certain value, but that it was not collected from the nearest relatives upon the father's side; and that the tax was the most fruitful as well as most comprehensive." 1 Gibbon's Rome, 133; *Encyc. Brit.* (8th Am. ed.) 65, tit. "Taxation."

"It was called *vicissima hereditatum et legatorum*. In this country the tax is variously called an 'inheritance tax,' a 'legacy tax,' a 'transfer tax' and a 'succession duty.' It is defined as follows: 'A burden imposed by government upon all gifts, legacies, inheritances and successions, whether of real or personal property, or both, or any interest therein, passing to certain persons (other than those specially excepted) by will, by intestate law, or by any deed or instrument made *inter vivos*, intended to take effect at or after the death of the grantor,' Dos Passos (2d ed.), s. 2. This method of taxation has been long resorted to in European countries and was introduced into Great Britain by Lord North and adopted in 1780. Of the states of the American union, Pennsylvania was the first to adopt it, in 1826, since which date it has been adopted as a means of governmental support by a great many other states. As a means of raising revenue, the method is generally commended by writers on political economy." Mill's Political Economy, bk. 5, c. 62, s. 3. "It is generally conceded that no tax can be less burdensome, and interfere less with the industrial agencies of society." Smith's Wealth of Nations, 683. *In re Morris*, 138 N. C. 259, 50 S. E. 682.

### Power of Legislature.

The legislature has an unlimited right to tax all persons and property within the state. *Pullen v. Commissioners* (1872), 66 N. C. 361. It is not necessary to the validity of the tax that the state constitution should contain a specific delegation of power authorizing the legislature to impose such taxation. The power of the legislature over the state legislation is absolute unless restricted by the constitution of the state or nation. *In re Morris*, 138 N. C. 259, 50 S. E. 682.

"The right to give or take property is not one of those natural and inalienable rights which are supposed to precede all government, and which no government can rightfully impair. There was a time, at least as to gift by will, it did not exist; and there may be a time again when it will seem wise and expedient to deny it. These are the uncontested powers of the legislature upon which no article of the constitution has laid its hands to impair them. If the legislature may destroy this right, may it not regulate it? May it not impose conditions upon its exercise? And the condition it has imposed in this case is a tax. It is argued, however, that because the constitution (article V, section 3) says that 'the general assembly may also tax trades, professions, franchises and incomes,' and as this

right of succession cannot be technically classed under either of these heads, it must be implied that the legislature is forbidden to tax such a right, on the rule of interpretation that the expression of one thing implies the exclusion of any other. We think the implication is too slight to restrict the legislative power in the exercise of so vital a portion of it as that of taxation, and especially so when we can conceive of no reason of policy or justice requiring such a restriction. It might as well be contended that since section 6 says the legislature may exempt cemeteries, etc., enumerating several matters of which the right in question is not one, the legislature is thereby impliedly forbidden to exempt this right or any other possible subject of taxation whatever not mentioned in the section. It is not by such artificial rules that constitutions are to be construed." *Per* Rodman, J., in *Pullen v. Commissioners*, 66 N. C. 361.

### THE EARLY STATUTES.

N. C. St. 1847, c. 72, ratified January 18, 1847, provided a tax on collateral kindred or others than lineal descendants except the widow of the decedent, of one (1) per cent on real estate descended or devised of the value of three hundred (\$300) dollars or more and of one (1) per cent on personal property of two hundred (\$200) dollars or more bequeathed to strangers or collaterals. [The balance of the act provides for the collection and payment of the tax.]

#### Remainder Taxable.

N. C. St. 1847, c. 72, imposed a tax on legacies to collateral kindred. The court holds that the words of the act are sufficiently extensive to embrace a legacy in remainder. *Attorney General v. Pierce*, 59 N. C. 249.

N. C. St. 1848-49, c. 81, approved January 27, 1849, makes it the duty of executors before making distribution to apply for appraisers for the inheritance tax.

N. C. St. 1855, c. 37, approved February 12, 1855, s. 7, provides that the tax shall be one (1) per cent on brothers or sisters or their descendants, and two (2) per cent on brothers or sisters of the father or mother of the deceased or their descendants, and three (3) per cent on other collaterals.

N. C. St. 1855, was repeated in N. C. St. 1856, c. 34, s. 7.

### THE REVISED CODE OF 1855.

#### Exemptions.

N. C. Revised Code, c. 99, s. 7, contains no exemption in favor of a college or church and therefore these distributees are liable to pay the tax. *Barringer v. Cowan*, 55 N. C. 436.

**Property out of the State.**

N. C. Revised Code, c. 99, ss. 7-12, does not impose a tax on property of the decedent which is not in the state though given by will or devolving by law upon one of our citizens. *State v. Brevard*, 62 N. C. 141.

**Executors Liable.**

Under N. C. Revised Code, c. 99, ss. 7-12, the executors are liable for a tax on a legacy to one of them. *State v. Brevard*, 62 N. C. 141.

**When Paid.—On Settlement.**

N. C. Revised Code, c. 99, s. 8, provided that the executor "shall retain out of the legacy or distributive share of every such legatee or next of kin" . . . "on his settlement of the estate." The words "on his settlement" do not refer to a final settlement of the estate, but its settlement so far as the legatee or distributee is concerned, out of whose legacy or share the tax is to be retained and the tax on each should be paid as soon as this legacy itself was paid. *Attorney General v. Allen* (1860), 59 N. C. 144.

**Where Property Depreciates.**

Where the executors have confederate money in their hands which has become valueless the tax upon this money cannot be determined until it is decided whether the executors will be allowed for this loss on settlement with legatees. If the legatees get good money the state must of course have a tax from it. *State v. Brevard*, 62 N. C. 141.

**Non-residents.**

This statute fixes the tax according to the situs of the property, not according to the domicile of the testator. So where a Canadian dies leaving personal property in North Carolina, the distributee receives the property from the administrator appointed here and must pay the North Carolina tax. *Alvany v. Powell* (1854), 55 N. C. 51, explained in *State v. Brim*, 57 N. C. 300.

Where a testator died domiciled abroad where his personal estate is, and leaves property to collateral relatives in North Carolina, the relatives in North Carolina were not liable to the tax. *State v. Brim*, 57 N. C. 300.

## LATER ACTS.

N. C. St. 1858, ratified February 16, 1859, c. 25, s. 27 (18), enacts the same tax as before on real and personal estate above the value of one hundred (\$100) dollars.

N. C. St. 1860, ratified February 23, 1861, c. 32, s. 2 (7), provides that the executors shall return in the inventory the relationship of beneficiaries.

N. C. St. 1861, c. 31, s. 54 (14), ratified September 3, 1861, repeats the tax on collateral inheritances.

N. C. St. 1864-5, c. 27, s. 52 (16), approved December 23, 1864, makes the taxes on brothers and sisters two (2) per cent; on brothers and sisters of father and mother of deceased, or their children four (4) per cent; and on more remote relations or strangers, six (6) per cent.

N. C. St. 1866, c. 21, s. 13, approved March 12, 1866, omits the exemption of one hundred (\$100) dollars.

N. C. St. 1866, c. 72, s. 16, ratified February 26, 1867, provides a tax on brothers and sisters of a father or mother of the deceased or their issue of one (1) per cent; and on more remote relations or strangers of one and one-half (1 1-2) per cent.

N. C. St. 1868-69, c. 108, s. 2, ratified April 1, 1869, provides for a tax of one (1) per cent on a brother or sister of the father or mother and on their issue, and on a more remote relation or a stranger a tax of two (2) per cent.

N. C. St. 1869, c. 229, s. 2, ratified March 28, 1870, provides for a tax on the brother or sister of the father or mother of the deceased or their issue of one (1) per cent and one (1) per cent on a more remote relation or stranger, and also provides particularly for the collection of the tax.

[As to the nature of the tax under this statute, see p. 974.]

N. C. St. 1870-71, c. 227, s. 2, ratified April 5, 1871, provides for a tax on the brother or sister of the father or mother of the deceased or their issue of one (1) per cent; on a more remote relation or a stranger of two and one-half (2½) per cent.

N. C. St. 1870-71, c. 227, is not retrospective, and could not constitutionally be so. *Pullen v. Commissioners*, 66 N. C. 267.

N. C. St. 1871-72, c. 58, ratified January 24, 1872, s. 2, provides a tax on brothers or sisters of the father or mother of the deceased or their issue of one (1) per cent; and on a more remote relation or stranger of two and one-half (2½) per cent.

N. C. St. 1872-73, c. 144, approved March 3, 1873, s. 2, provides a tax on a brother or sister of the father or mother of the deceased or their issue of one (1) per cent; and on a more remote relation or a stranger of two and one-half (2½) per cent.

The collateral inheritance tax was dropped from the Revenue Act of 1874. See N. C. Laws, 1873-74, c. 134.

N. C. Code of 1883, s. 3867, provides that "all public and general statutes not contained in this Code are hereby repealed, with the exceptions and limitations hereinafter mentioned. The Code contains no inheritance tax.

## THE RECENT STATUTES.

N. C. St. 1897, c. 168, ratified March 9, 1897, s. 41, provides an inheritance tax of two-thirds of one per cent on direct inheritances and one and one-half per cent on collaterals.

N. C. St. 1901, c. 9, s. 12, approved March 15, 1901, creates an inheritance tax graduated according to relationship and amount.

N. C. St. 1903, c. 247, s. 6, provides a tax of three-quarters of one per cent on lineals or the brother or sister, or where the person to whom the property devised stood in the relation of a child to the decedent; and one and one-half per cent on descendants of brothers or sisters; three per cent to uncles and aunts and their descendants; four per cent on a brother or sister of a grandfather or grandmother or their descendants; five per cent on strangers and other collaterals with a graduated rate on five thousand dollars up to fifty thousand dollars as in the statute of 1909.

N. C. St. 1903, c. 247, is constitutional. *In re Morris*, 138 N. C. 259, 50 S. E. 682.

### Assessment.

It is not proper or necessary for the court on appeal to adjudicate the amount of the tax to be levied. It is the duty of the clerk to have an appraisal made under s. 15 of N. C. St. 1903, and to ascertain and declare the amount of the tax to be paid. *In re Morris*, 138 N. C. 259, 50 S. E. 682.

### The Statute Overrides the Testator's Direction to Make no Returns.

The provisions of N. C. St. 1903, c. 247, ss. 6-21, govern and should be followed; and the fact that the testator in his will directed his executors not to make any returns of his property cannot be permitted to have the effect of nullifying the statute. *In re Morris*, 138 N. C. 259, 50 S. E. 682.

N. C. St. 1905, c. 588, s. 6, approved March 6, 1905, provides an inheritance tax graduated according to relationship and amounts.

N. C. St. 1907, c. 256, s. 6, approved March 11, 1907, provides an inheritance tax graduated according to relationship and amount.

## THE PRESENT ACT.

N. C. St. 1911, c. 46.

### SCHEDULE AA.

**S. 6. Rate of inheritance tax.** From and after the passage of this act, all real and personal property of whatever kind and nature which shall pass by will or by the intestate laws of this state from any person who may die seized or possessed of the same while a resident of this state, whether the person or

**S. 9. Executor, etc., shall deduct tax.** The executor or administrator or other trustee paying any legacy or share in the distribution of any estate subject to said tax shall deduct therefrom at the rate prescribed, or if the legacy or share in the estate be not money he shall demand payment of a sum to be computed at the same rates upon the appraised value thereof for the use of the state, and no executor or administrator shall be compelled to pay or deliver any specific legacy or article to be distributed, subject to tax, except on the payment into his hands of a sum computed on its value as aforesaid; and in case of neglect or refusal on the part of said legatee to pay the same such specific legacy or article or so much thereof as shall be necessary shall be sold by such executor or administrator at public sale, after notice to such legatee, and the balance that may be left in the hands of the executor or administrator shall be distributed as is or may be directed by law; and every sum of money retained by any executor or administrator or paid into his hands on account of any legacy or distributive share for the use of the state shall be paid by him to the proper officer without delay.

When tax is payable, see 977.

Rights on depreciation of property in hands of executors, see 977.

**S. 10. Legacy for life, etc., tax to be retained upon the whole amount.** If the legacy subject to said tax be given to any person for life or for a term of years or for any other limited period, upon a condition or contingency, if the same be money, the tax thereon shall be retained upon the whole amount; but if not money, application shall be made to the court having jurisdiction of the accounts of executors and administrators to make apportionment, if the case requires it, of the sum to be paid by such legatee, and for such further order relative thereto as equity shall require.

**S. 11. Legacy charged upon real estate, heir or devisee to deduct and pay to executor, etc.** Whenever such legacy shall be charged upon or payable out of real estate the heir or devisee of such real estate, before paying the same to such legatee, shall deduct therefrom at the rates aforesaid, and pay the amount so deducted to the executor or administrator, and the same shall remain a charge upon such real estate until paid, and in default thereof the same shall be enforced by the decree of the court in the same manner as the payment of such legacy may be enforced: *Provided*, that all taxes imposed by this act shall be a lien upon the personal property of the estate on which the tax is imposed or upon the proceeds arising from the sale of such property, from the time said tax is due and payable, and shall continue a lien until said tax is paid and receipted for by the proper officer of the state.

**S. 12. Executor or administrator to take duplicate receipts from the clerk of the court.** It shall be the duty of any executor or administrator, on the payment of said tax, to take duplicate receipts from the clerk of the court, one of which shall be forwarded forthwith to the auditor of the state, whose duty it shall be to charge the clerk receiving the money with the amount and seal with the seal of his office and countersign the receipt and transmit it to the

executor or administrator, whereupon it shall be a proper voucher in the settlement of the estate, but in no event shall an executor or administrator be entitled to a credit in his account by the clerk unless the receipt is so sealed and countersigned by the auditor of the state.

**S. 13. Foreign executor or administrator transferring stock shall pay the tax on such transfer.** Whenever any foreign executor or administrator or trustee shall assign or transfer any stocks or bonds in this state standing in the name of the decedent or in trust for a decedent, which shall be liable for the said tax, such tax shall be paid on the transfer thereof to the clerk of the court of the county where such transfer is made; otherwise, the corporation permitting such transfer shall become liable to pay such tax.

Tax on non-residents, see p. 977.

**S. 14. Proportion of tax to be repaid upon certain conditions.** Whenever debts shall be proven against the estate of a decedent, after the distribution of legacies from which the inheritance tax has been deducted in compliance with this act, and the legatee is required to refund any portion of the legacy, a proportion of the said tax shall be repaid to him by the executor or administrator if the said tax has not been paid into the state treasury, or shall be refunded by the state treasurer if it has been so paid in.

**S. 15. Appraiser to be appointed by the clerk, etc.** It shall be the duty of the clerk of the court of the county in which letters testamentary or of administration are granted to appoint an appraiser, as often as and whenever occasion may require, to fix the valuation of estates which are or shall be subject to inheritance tax, and it shall be the duty of said appraiser to make a fair and conscionable appraisement of such estates; and it shall further be the duty of such appraiser to assess and fix the cash value of all annuities and life estates growing out of said estates, upon which annuities and life estates the inheritance tax shall be immediately payable out of the estate at the rate of such valuation: *Provided*, that any person or persons not satisfied with said appraisement shall have the right to appeal within sixty days to the court of the proper county on paying or giving security to pay all costs, together with whatever tax shall be fixed by said court, and upon such appeal said court shall have jurisdiction to determine all questions of valuation and of the liability of the appraised estate for such tax, subject to the right of appeal to the supreme court as in other cases. The compensation of appraisers appointed under this act shall be at the rate of three dollars per day for each day necessarily employed in making the appraisement, together with such necessary traveling expenses as may be incurred, a statement of which shall be properly itemized and sworn to, subject to the final approval of the auditor of state before payment is made by the clerk of the court.

Assessment by appraiser and not by the court on appeal, see p. 979.

**S. 16. Misdemeanor for appraiser to take fee or reward from executor or administrator.** It shall be a misdemeanor for any appraiser appointed



by the clerk to make any appraisement in behalf of the state to take any fee or reward from any executor or administrator, legatee, next of kin or heir of any decedent, and for any such offense the clerk of the court shall dismiss him from such service, and upon conviction in the superior court he shall be fined not exceeding five hundred dollars and imprisoned not exceeding one year, or both, or either, at the discretion of the court.

**S. 17. Clerk to enter returns made by appraisers, etc.** It shall be the duty of the clerk of the court to enter in a book to be provided at the expense of the state, to be kept for that purpose, and which shall be a public record, the returns made by all appraisers, under this act, opening an account in favor of the state against the decedent's estate; and the clerk may give certificates of payment of such tax from such record; and it shall be the duty of the clerk of the court to transmit to the auditor of the state on the first Monday of each month a statement of all returns made by appraisers during the preceding month, giving the name of the estate and the clear valuation thereof, subject to the foregoing tax, and the amount of the tax, which statement shall be entered by the auditor in a book to be kept by him for that purpose; and whenever any such tax shall have remained due and unpaid for one year it shall be lawful for the clerk of the court to apply to the court by bill or petition to enforce the payment of the same; whereupon said court, having caused due notice to be given to the owner or owners of the estate charged with the tax and to such other person or persons as may be interested, shall proceed according to equity to make such decrees or orders for the payment of the said tax out of such estates as shall be just and proper.

**S. 18. Court may order executor, etc., to file account, etc.** If the clerk of the court shall discover that said tax has not been paid according to law, the court shall be authorized to cite the executors or administrators of the decedent whose estate is subject to the tax to file an account or to issue a citation to the executors, administrators, legatees or heirs, citing them to appear on a day certain and show cause why the said tax should not be paid, and when personal service cannot be had, notice shall be given for four weeks, once a week, in at least one newspaper published in said county; and if the said tax shall be found to be due and unpaid, the said delinquent shall pay said tax, interest and costs; and it shall be the duty of the solicitor of the district in which the said delinquent resides to sue for the recovery and amount of such tax, and for such services he shall be allowed a fee, to be fixed by the judge, not to exceed five per cent of the amount recovered. The auditor of the state is authorized and empowered, in settlement of accounts of any clerk, to allow him costs of advertising and other reasonable fees and expenses incurred in the collection of said tax.

Duty to file returns notwithstanding direction in will, see p. 979.

**S. 19. Clerk to be agent of the state for collection of said tax.** The clerks of the courts of the several counties of this state shall be the agents of the state for the collection of the said tax, and for services rendered in collecting and paying over the same the said agents shall be allowed to retain for their own

use such percentage as may be allowed by the auditor, not exceeding three per centum on all taxes paid and accounted for.

**S. 20. Clerk to be liable on his official bond.** The said clerks of the courts shall be liable on their official bonds to the state for the faithful performance of the duties hereby imposed and for the regular accounting and paying over of the amounts to be collected and received.

**S. 21. Clerk to make returns and payments to the state treasurer.** It shall be the duty of the clerk of the court of each county to make returns and payments to the state treasurer of the taxes under this act which he shall have received, stating for what estate paid, on the first Monday of each month; and for all taxes collected by him and not paid over to the state treasurer within ten days after said monthly return of the same he shall pay interest at the rate of twelve per centum per annum until paid.

## NORTH DAKOTA.

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North Dakota adopted a collateral inheritance tax in 1903. Collateral inheritances only are taxed. The rate is uniformly two per cent on the excess over \$25,000. Inheritances not taxed are those to father, mother, husband, wife, lineal descendent, adopted child, lineal descendent of adopted child. Stock in a North Dakota corporation owned by a non-resident is not taxed.

### **Constitutional Limitations.**

**North Dakota Constitution, 1889, a. 11, s. 176.**

Laws shall be passed taxing by uniform rule all property according to its true value in money, but the property of the United States and the state, county and municipal corporations, both real and personal, shall be exempt from taxation; and the legislative assembly shall by a general law exempt from taxation property used exclusively for school, religious, cemetery or charitable purposes and personal property to any amount not exceeding in value two hundred dollars for each individual liable to taxation. . . .

### **List of Statutes.**

1903. Statutes of North Dakota, c. 171, approved March 10, 1903.

1905. Revised Code, c. 10, ss. 8320-8339.

### **THE PRESENT ACT.**

**North Dakota Revised Code of 1905, c. 10.**

S. 8320. **Rate.** All property within the jurisdiction of this state, and any interest therein, whether belonging to the inhabitants of this state or not, and whether tangible or intangible, which shall pass by will or by the statutes of succession or inheritance of this or any other state, or by deed, grant, sale or gift intended to take effect in possession or in enjoyment after the death of the grantor or donor, to any person in trust or otherwise, other than to or for the use of the father, mother, husband, wife, lineal descendant, adopted child, the lineal descendant of an adopted child of a decedent or to or for charitable, educational or religious societies or institutions within this state, shall be subject to a tax of two per centum of its valuation, above the sum of twenty-five thousand dollars, after the payment of all debts, for the use of the state; and all administrators, executors and trustees, and any such grantee under a conveyance, and any such donee under a gift, made during the grantor's or donor's life, shall be respectively liable for all such taxes to be paid by them respectively, except as herein otherwise provided, with lawful interest as hereinafter set

forth, until the same shall have been paid. The tax aforesaid shall be and remain a lien on such estate from the death of the decedent until paid. (1903, ch. 171, s. 1.)

**S. 8321. Debts deducted.** The term "debts" shall include, in addition to debts owing by decedent at the time of his death, the local or state taxes due from the estate prior to his death, and a reasonable sum for funeral expenses, court costs, including the costs of appraisement made for the purpose of assessing the collateral succession or inheritance tax, the statutory fees of executors, administrators or trustees, and no other sum; but said debts shall not be deducted unless the same are approved and allowed, within fifteen months from the death of decedent, as established claims against the estate, unless otherwise ordered by the judge or court of the proper county. (1903, ch. 171, s. 2.)

**S. 8322. Property subject to tax.** Except as to property passing to persons, corporations or societies exempted by section 8320 from the collateral succession or inheritance tax, and real property located outside of the state passing in fee from the decedent owner, the tax imposed under the provisions of this chapter shall be assessed against and be collected from, property of every kind, which, at the death of the decedent owner is subject to or thereafter, for the purpose of distribution, is brought into this state for distribution purposes, or which was owned by any decedent-domiciled within the state at the time of the death of such decedent even though the property of said decedent so domiciled was situated outside of the state. (1903, ch. 171, s. 3.)

**S. 8323. Construction.** In the construction of this chapter the words "collateral heirs" shall be held to mean all persons who are not excepted from the provisions of the collateral succession or inheritance tax under the provisions of this chapter, except section 8322, shall apply to all pending estates which are not closed, and the property subjected by this chapter to the said tax is liable to the provisions herein contained, as to the amount and lien hereof, and the manner of enforcement and collection thereof, except as herein specifically provided otherwise. (1903, ch. 171, s. 4.)

**S. 8324. Foreign estates and deduction of debts.** Whenever any property belonging to a foreign estate, which estate, in whole or in part is liable to pay a collateral succession or inheritance tax in this state, and said tax shall be assessed upon the market value of said property remaining after the payment of such debts and expenses as are chargeable to the property under the laws of this state; in the event that the executor, administrator or trustee of such foreign estate files with the clerk of the court having ancillary jurisdiction, and with the state treasurer, duly certified statements exhibiting the true market value of the entire estate of the decedent owner, and the indebtedness for which the said estate has been adjudged liable, which statement shall be duly attested by the judge of the court having original jurisdiction, the beneficiaries of said estate shall then be entitled to have deducted such proportion of the said indebtedness of the decedent from the value of the property as the value of the property within this state bears to the value of the entire estate. (1903, ch. 171, s. 5.)

**S. 8325. Foreign estates and direct and collateral beneficiaries.** Whenever any property, real or personal, within this state belongs to a foreign estate, and said foreign estate is in part exempt from the collateral succession or inheritance tax, and in part subject to said collateral succession or inheritance tax, and it is within the authority or discretion of the foreign executor, administrator or trustee administering the estate to dispose of the property, not specifically devised to direct heirs or devisees in the payment of the debts owing by decedent at the time of his death, or in the satisfaction of legacies, devises or trusts given to direct and collateral legatees or devisees, or in payment of the distributive shares of any direct and collateral heirs, then the property within the jurisdiction of this state belonging to such foreign estate, shall be subject to the collateral succession or inheritance tax imposed under the provisions hereof, and the tax due thereon shall be assessed as provided in section 8324, and with the same proviso respecting the deduction of the proportionate share of the indebtedness, as herein provided. (1903, ch. 171, s. 6.)

**S. 8326. Lien.** It shall be the duty of the executor, administrator or trustee, immediately upon his appointment, to make and file a separate inventory, any will to the contrary notwithstanding, of all the real estate of the decedent liable to such tax, and to cause the lien of the same to be entered upon the lien book in the office of the clerk of the court in each county where each particular part of said real estate is situated, and no conveyance of said estate or interest therein, which is subject to such tax before or after the entering of said lien, shall discharge the estate so conveyed from the operation thereof. (1903, ch. 171, s. 7.)

**S. 8327. Appraisal.** All the real estate of the decedent subject to such tax shall, except as hereinafter provided, be appraised within thirty days next after the appointment of an executor, administrator or trustee, and the tax thereon, calculated upon the appraised value after deducting debts for which the estate is liable shall be paid by the person entitled to said estate within fifteen months from the approval by the court of such appraisement, unless a longer period is fixed by the court, and in default thereof, the court shall order the same, or so much thereof as may be necessary to pay such tax, to be sold. (1903, ch. 171, s. 8.)

**S. 8328. Remainders.** When any person whose estate, over and above the amount of his just debts, exceeds the sum of one thousand dollars shall bequeath or devise any real property to or for the use of the father, mother, husband, wife, lineal descendant, adopted child, or lineal descendant of such child, during life or for a term of years, and the remainder to a collateral heir or to a stranger to the blood, the court, upon the determination of such estate for life or years, shall upon its own motion or upon the application of the state treasurer, cause such estate to be appraised at its then actual market value, from which shall be deducted the value of any improvements thereon, or betterments thereto, if any, made by the remainderman during the time of the prior estate, to be ascertained and determined by the appraisers, and the tax on the remainder shall be paid by such remainderman within sixty days from the approval by the court of the report of the appraisers. If such tax is not paid within said time, the court shall then order said real estate, or so much thereof as shall be necessary to pay such tax, to be sold. (1903, ch. 171, c. 9.)

**S. 8329. Life estate.** Whenever any real estate of a decedent shall be subject to such tax, and there be a life estate or interest for a term of years given to a party other than named in the preceding section, and the remainder to a collateral heir or stranger to the blood, the court shall direct the interest of the life estate or term of years to be appraised at the actual market value thereof, and upon the approval of such appraisal by the court, the party entitled to such life estate, or term of years, shall within sixty days thereafter pay such tax, and in default thereof the court shall order such interest in said estate, or so much thereof as shall be necessary to pay such tax, to be sold. Upon the determination of such life estate or term of years, the same provision shall apply as to the ascertainment of the amount of the tax and the collection of the same on the real estate in remainder as in like cases is provided in the preceding section. Whenever any personal estate of a decedent shall be subject to such tax, and there be a life estate or interest for a term of years given to a party other than named in the preceding section, and the remainder to a collateral heir or stranger to the blood, the court shall inquire into and determine the value of the life estate or interest for a term of years, and order and direct the amount of the tax thereon to be paid by the prior estate and that to be paid by the remainderman, each of whom shall pay their proportion of such tax within sixty days from such determination, unless a longer period is fixed by the court, and in default thereof the executor, administrator or trustee shall pay the same out of said property, and hold the same from distribution, and invest it at interest under the order of the court until said tax is paid, or until the interest on the same equals the amount of such tax, which shall thereupon be paid. (1903, ch. 171, s. 10.)

**S. 8330. Executors or trustees.** Whenever a decedent appoints one or more executors or trustees, and in lieu of their allowance or commission, makes a bequest or devise of property to them which would otherwise be liable to said tax, or appoints them his residuary legatees, and said bequests, devises, or residuary legacies, exceed what would be a reasonable compensation for their services, such excess shall be liable to such tax, and the court having jurisdiction of their accounts, upon its own motion or on the application of the state treasurer, shall fix such compensation. (1903, ch. 171, s. 11.)

**S. 8331. Legacies charged upon land.** Whenever any legacies subject to said tax are charged upon or payable out of any real estate, the heir or devisee, before paying the same, shall deduct said tax therefrom and pay it to the executor, administrator, trustee or state treasurer, and the same shall remain a charge and be a lien upon said real estate until it is paid; and payment thereof shall be enforced by the executor, administrator, trustee or state treasurer in his name of office, in the same manner as the payment of the legacy itself could be enforced. (1903, ch. 171, s. 12.)

**S. 8332. Payment by executor or trustee.** Every executor, administrator or trustee having in charge or trust any property subject to said tax, and which is made payable to him, shall deduct the tax therefrom, or shall collect the tax thereon from the legatee, or person entitled to said property, and he shall not deliver a specific legacy or property subject to said tax to any person until he has collected the tax thereon. (1903, ch. 171, s. 13.)

**S. 8325. Foreign estates and direct and collateral beneficiaries.** Whenever any property, real or personal, within this state belongs to a foreign estate, and said foreign estate is in part exempt from the collateral succession or inheritance tax, and in part subject to said collateral succession or inheritance tax, and it is within the authority or discretion of the foreign executor, administrator or trustee administering the estate to dispose of the property, not specifically devised to direct heirs or devisees in the payment of the debts owing by decedent at the time of his death, or in the satisfaction of legacies, devises or trusts given to direct and collateral legatees or devisees, or in payment of the distributive shares of any direct and collateral heirs, then the property within the jurisdiction of this state belonging to such foreign estate, shall be subject to the collateral succession or inheritance tax imposed under the provisions hereof, and the tax due thereon shall be assessed as provided in section 8324, and with the same proviso respecting the deduction of the proportionate share of the indebtedness, as herein provided. (1903, ch. 171, s. 6.)

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**S. 8329. Life estate.** Whenever any real estate of a decedent shall be subject to such tax, and there be a life estate or interest for a term of years given to a party other than named in the preceding section, and the remainder to a collateral heir or stranger to the blood, the court shall direct the interest of the life estate or term of years to be appraised at the actual market value thereof, and upon the approval of such appraisement by the court, the party entitled to such life estate, or term of years, shall within sixty days thereafter pay such tax, and in default thereof the court shall order such interest in said estate, or so much thereof as shall be necessary to pay such tax, to be sold. Upon the determination of such life estate or term of years, the same provision shall apply as to the ascertainment of the amount of the tax and the collection of the same on the real estate in remainder as in like cases is provided in the preceding section. Whenever any personal estate of a decedent shall be subject to such tax, and there be a life estate or interest for a term of years given to a party other than named in the preceding section, and the remainder to a collateral heir or stranger to the blood, the court shall inquire into and determine the value of the life estate or interest for a term of years, and order and direct the amount of the tax thereon to be paid by the prior estate and that to be paid by the remainderman, each of whom shall pay their proportion of such tax within sixty days from such determination, unless a longer period is fixed by the court, and in default thereof the executor, administrator or trustee shall pay the same out of said property, and hold the same from distribution, and invest it at interest under the order of the court until said tax is paid, or until the interest on the same equals the amount of such tax, which shall thereupon be paid. (1903, ch. 171, s. 10.)

**S. 8330. Executors or trustees.** Whenever a decedent appoints one or more executors or trustees, and in lieu of their allowance or commission, makes a bequest or devise of property to them which would otherwise be liable to said tax, or appoints them his residuary legatees, and said bequests, devises, or residuary legacies, exceed what would be a reasonable compensation for their services, such excess shall be liable to such tax, and the court having jurisdiction of their accounts, upon its own motion or on the application of the state treasurer, shall fix such compensation. (1903, ch. 171, s. 11.)

**S. 8331. Legacies charged upon land.** Whenever any legacies subject to said tax are charged upon or payable out of any real estate, the heir or devisee, before paying the same, shall deduct said tax therefrom and pay it to the executor, administrator, trustee or state treasurer, and the same shall remain a charge and be a lien upon said real estate until it is paid; and payment thereof shall be enforced by the executor, administrator, trustee or state treasurer in his name of office, in the same manner as the payment of the legacy itself could be enforced. (1903, ch. 171, s. 12.)

**S. 8332. Payment by executor or trustee.** Every executor, administrator or trustee having in charge or trust any property subject to said tax, and which is made payable to him, shall deduct the tax therefrom, or shall collect the tax thereon from the legatee, or person entitled to said property, and he shall not deliver a specific legacy or property subject to said tax to any person until he has collected the tax thereon. (1903, ch. 171, s. 13.)



**S. 8333. Payment to state.** All taxes imposed by the provisions of this chapter shall be payable to the state treasurer, and those which are made payable by executors, administrators or trustees shall be paid within fifteen months from the death of the testator or intestate, or within fifteen months from assuming of the trust by such trustee, unless a longer period is fixed by the court. All taxes not paid within the time prescribed in this chapter shall draw interest at the rate of eight per centum per annum until paid. (1903, ch. 171, s. 14.)

**S. 8334. Method of appraisement.** All appraisements of real estate subject to such tax shall be made and filed in the manner provided for appraisement of personal property. When such real estate is situated in another county the same appraisers may serve, or others may be appointed. (1903, ch. 171, s. 15.)

**S. 8335. Collections.** It is hereby made the duty of all executors, administrators or trustees charged with the management or settlement of any estate subject to the tax provided for in this chapter, to collect and pay to the state treasurer the amount of the tax due from any devisee, grantee or donee of the decedent, except in cases falling under the provisions of sections 8329 and 8330 hereof, in which cases the state treasurer shall collect the same. Applications may be made to the district court by such executor, administrator, trustee or state treasurer to sell the real estate subject to said tax in an equitable action, or, if made to the court having charge of the settlement of said estate, the proceedings shall conform as nearly as may be to those for the sale of real estate of a decedent for the settlement of his debts. (1903, ch. 171, s. 16.)

**S. 8336. Property certified to treasurer.** Whenever any real estate of a decedent shall so pass, either in possession and enjoyment or in remainder as to the subject of such tax, the executor, administrator or trustee, within six months after he has assumed the duties of his trust, shall file with the state treasurer a description of such real estate, giving the name of the county where the same is situated, the name of the decedent, the name of the person or persons to whom it so passes, whether the same passes in possession and enjoyment in fee, for life or for a term of years, naming the term of years, and if a prior estate is created, he shall give the name of the remainder-man. (1903, ch. 171, s. 17.)

**S. 8337. Copy of appraisement.** As soon as any such real estate is appraised, it shall be the duty of the executor, administrator or trustee, if he has not been discharged, and if he has finally been discharged, then it shall be the duty of the clerk, to file with the state treasurer a copy of such appraisement, stating the amount of tax to be paid and within what time ordered to be paid. (1903, ch. 171, s. 18.)

**S. 8338. Settlements with executors or trustees.** No final settlement of the account of any executor, administrator or trustee shall be accepted or allowed unless it shall show, and the court shall find, that taxes imposed by the provisions of this chapter upon any property or interest therein belonging to the estate to be paid by such executors, administrators or trustees, and to be

settled by said account, shall have been paid, and the receipt of the state treasurer for such tax shall be the proper voucher for such payment. (1903, ch. 171, s. 19.)

**S. 8339. Jurisdiction of the court.** The district court having either principal or ancillary jurisdiction of the settlement of the estate of the decedent shall have jurisdiction to hear and determine all questions in relation to said tax that may arise affecting any devise, legacy or inheritance, or any grant or gift, under this chapter, subject to appeal as in other cases, and the state treasurer shall in his name of office represent the interests of the state in any such proceeding. (1903, ch. 171, s. 20.)

## OHIO.

### In General.

Ohio imposed a collateral inheritance tax in 1893. In 1894 it was the first state to tax direct inheritances, and was also the first state to adopt rates increasing progressively according to the size of the estate. The act was held unconstitutional in 1895, on account of the progressive feature, and because it was not provided that the exemption (\$20,000) should be deducted from all estates exceeding that amount. This decision has not been generally followed in other jurisdictions.

In 1904 a uniform tax of two per cent was imposed on direct inheritances with an exemption of \$300. This was repealed in 1906. At present collateral inheritances only are taxed. The rate is uniformly five per cent and the exemption is \$200, which applies to the estate as a whole, not to the individual shares. The inheritances which are altogether exempt are those to father, mother, husband, wife, brother, sister, niece, nephew, lineal descendant, adopted child and its lineal descendant, wife or widow of son and husband of daughter. Stock in an Ohio corporation owned by a non-resident is not taxed.

### List of Statutes.

- 1893. Statutes of Ohio, Vol. 90, p. 14.
- 1894. " " " " 91, p. 166. (The direct inheritance tax.)
- 1894. " " " " 91, p. 169. (The collateral inheritance tax.)
- 1896. " " " " 92, p. 374.
- 1900. " " " " 94, p. 101.
- 1903. Bates Annotated Statutes, ss. 2731-1 to 2731-17.
- 1904. Statutes of Ohio, Vol. 97, p. 398.
- 1905. Bates Annotated Statutes (5th Ed.), ss. 2731-1 to 2731-17; 2731-1 to 2731-31.
- 1906. Statutes of Ohio, Vol. 98, p. 229.
- 1787-1908. Bates Annotated Ohio Statutes (6th Ed.), Vol. 1, ss. 2731-1 to 2731-17; 2731-18 to 2731-31.
- 1910. Gen. Code of Ohio, Vol. 2, ss. 5331 to 5348.

### Nature of Inheritance Tax.

The fact that an inheritance tax is made a lien on property does not render it a tax on property. *State v. Ferris*, 53 Ohio St. 314, 326, 41 N. E. 579, 30 L. R. A. 218, distinguishing *Estate of Bittinger*, 129 Pa. St. 338, 344.

The Ohio St. 1894 is upon its face a taxation of property itself, but the court construing the operation and effect of the statute regards it as a tax upon the right or privilege rather than the property. It is upon the right and privilege to receive and not upon the right to transmit. The right to receive property is under the control of the legislature and it has the power to regulate and lay such burdens thereon as it may see fit. *State v. Ferris*, 53 Ohio St. 314, 325, 41 N. E. 579, 30 L. R. A. 218.

"Man's dominion over his property ceases at his death, wherefore in all civilized countries the state provides how he may devolve it to others at his death and what shall become of it when he dies intestate.

"The right so given either to devolve or to succeed to property is subject to the power of the state to tax, and generally is taxed. To use a homely simile, it may be likened to the taking of toll from the grist that is sent to the mill, and aside from considerations of convenience it is immaterial whether the whole toll be taken as soon as the grist is received or proportionately as the flour is delivered. Generally, but not necessarily, the amount of the tax is measured by the value of the property. Our state, however, deeming it to the interest of the public not to make the tax oppressive, has imposed it upon the right of succession, and has exempted to three thousand dollars the value of the property in determining the amount of the tax.

"But while the tax has been likened to the toll that is taken for the grinding of a grist, it must not be overlooked that it is the *right* to devolve or to succeed to property that is taxed, and that an additional exaction might be made as is done in some states for the service in passing the property, sometimes, as in England, called probate duties. So that the right of the state to and the liability of the successor for the tax generally arises upon the death of the owner of the property and is not dependent upon the right of succession ripening into possession or enjoyment, and the fact, if it be a fact, that the state may have, by measuring the amount of the tax by the value of the property succeeded to,

made it impracticable or difficult to collect the tax until the right has ripened into possession, does not change the subject of the tax, but merely postpones its collection." *Per* Summers, J. *Eury v. State*, 72 Ohio St. 448, 74 N. E. 650.

### **Power to Tax Inheritances.**

The constitution is silent as to the application of revenue received otherwise than on property, and therefore, if such taxes can be levied and collected at all, their application is within the sole and exclusive power and discretion of the general assembly. Article 12, s. 2, of the constitution provides that laws shall be passed taxing by a uniform rule all property, but this did not confine the power of the legislature to a property tax, as under a. 2, s. 1, of the constitution the general assembly is given legislative power. This power, being unlimited, is broad enough to include the power to tax rights, privileges and franchises. *State v. Ferris*, 53 Ohio St. 314, 41 N. E. 579, 30 L. R. A. 218.

### **Constitutional Limitations.**

#### **Ohio Bill of Rights.**

S. 1. **Right to freedom and protection of property.** All men, are, by nature, free and independent, and have certain inalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing, and protecting property, and seeking and obtaining happiness and safety.

The provisions of the first section of the fourteenth amendment to the federal constitution, which provide that no state shall "deny to any person within its jurisdiction the equal protection of its laws," is not broader than the second section of the Ohio bill of rights, to the effect that government is instituted for the equal protection and benefit of the people. *State v. Ferris*, 53 Ohio St. 314, 41 N. E. 579, 30 L. R. A. 218.

#### **Ohio. Const. a. 2.**

S. 26. **What laws to have a uniform operation.** All laws, of a general nature, shall have a uniform operation throughout the state; nor, shall any act, except as such as relates to public schools, be passed, to take effect upon the approval of any other authority than the general assembly, except, as otherwise provided in this constitution.

#### **Ohio Const. a. 12.**

S. 2. Laws shall be passed, taxing by a uniform rule, all moneys, credits, investments in bonds, stocks, joint stock companies, or otherwise; and also all real and personal property, according to its true value in money; but burying grounds, public school houses, houses used exclusively for public worship, insti-

tutions of purely public charity public property used exclusively for any public purpose, and personal property, to an amount not exceeding in value two hundred dollars, for each individual may, by general laws, be exempted from taxation; but, all such laws shall be subject to alteration or repeal; and the value of all property, so exempted, shall, from time to time, be ascertained and published, as may be directed by law.

**Ohio Const. 1851, a. 12, s. 2.** As amended November, 1905.

Laws shall be passed, taxing by a uniform rule, all moneys, credits, investments in bonds, stocks, joint stock companies, or otherwise and also all real and personal property according to its true value in money, excepting bonds of the state of Ohio, bonds of any city, village, hamlet, county, or township in this state, and bonds issued in behalf of the public schools of Ohio and the means of instruction in connection therewith, which bonds shall be exempt from taxation; but burying grounds, public schoolhouses, houses used exclusively for public worship, institutions of purely public charity, public property used exclusively for any public purpose, and personal property, to an amount not exceeding in value two hundred dollars, for each individual, may, by general laws, be exempted from taxation; but all such laws shall be subject to alteration or repeal; and the value of all property, so exempted, shall, from time to time, be ascertained and published as may be directed by law.

This section requires uniformity and equality in the imposition of the burdens of taxation. *State v. Guilbert*, 70 Ohio St. 229, 71 N. E. 636. The section permits an exemption from taxation of personal property not exceeding \$200. It was said in *State v. Ferris*, 53 Ohio St. 314, 41 N. E. 579, 30 L. R. A. 218, that this provision of the constitution showed that an exemption up to \$200 in value would be regarded as for the equal protection and benefit of the people. The court does not assent to this proposition, but believes that article 12, s. 2, treats wholly and only of taxation of property. Article 12, s. 2, is not a grant of power, but a regulation of a power already granted in the first section of the second article. The court is of opinion that an excise tax which operates uniformly throughout the state and applies equally to all the subjects embraced within its terms does not deprive anyone of the equal protection of the law or in any manner violate the bill of rights nor any section of the constitution. *State v. Guilbert*, 70 Ohio St. 229, 253 (upholding the act of 1904).

### THE ACT OF 1893.

#### Origin.

This act seems to have been framed on those of the states of Virginia and Maine, each of which exempts the lineal descendants, and some of the collateral, and together all of the collaterals exempted in Ohio. *Dyer v. Hagerty*, 5 Ohio Cir. Dec. 701, 12 Ohio Cir. Ct. 606.

Ohio St. 1893, approved January 27, 1893, p. 14.

S. 1. Be it enacted by the general assembly of the state of Ohio, that all property within the jurisdiction of this state, and any interest therein, whether belonging to inhabitants of this state or not, and whether tangible or intangible, which shall pass by will or by the intestate laws of this state, or by deed, grant, sale or gift made or intended to take effect in possession or enjoyment after the death of the grantor, to any person in trust or otherwise, other than to or for the use of the father, mother, husband, wife, brother, sister, niece, nephew, lineal descendant, adopted child, the lineal descendant of any adopted child, the wife or widow of a son, the husband of the daughter of a decedent, shall be liable to a tax of three and one-half per centum of its value, above the sum of ten thousand dollars, for the use of the state, and all administrators, executors and trustees, and any such grantee under a conveyance made during the grantor's life shall be liable for all such taxes, with lawful interest as hereinafter provided, until the same shall have been paid as hereinafter directed.

### **"Within the Jurisdiction of this State."**

The testator, a resident of Kentucky, owned securities and money on deposit in banks in Ohio, and the court holds that the tax should be paid on these securities and whether the decedent is a resident or a non-resident is immaterial, residence not being a primary consideration to be had in view in enforcing the law. As the court has jurisdiction over the property the tax should be levied. *In re Speers*, 4 Ohio N. P. 238, 6 Low. D. 398.

### **Bequest for Masses.**

A bequest of \$300 for three hundred masses is a beneficial estate to the priest who will say the masses, and is therefore liable for the collateral inheritance tax. *In re Brinkman*, 38 Ohio Wkly. L. Bul. 304.

### **Computing Exemption.**

It was claimed that in addition to excluding the exemption due to each legatee the amount of the tax due from such persons is to be deducted and the amount payable computed upon the balance; but the court holds that the tax is payable upon the value of the legacy less the exemption and that the amount of the tax is not to be deducted from the legacy and the tax computed upon the balance. *In re Hooper*, 6 Low. D. 560, 4 Ohio N. P. 186.

### **Exemption.**

The exemption applies to each specific legacy. *In re Thomson*, 48 Ohio Wkly. L. Bul. 212.

**Various Gifts to the Same Person.**

Where in separate items of a will two or more legacies or devises are given to the same non-exempt person, it matters not whether the property pass under one or more items of the will or whether the property passing under more than one item be real or personal, the tax is collectable on the aggregate of such property less two hundred dollars, which is exempt. Under the Ohio statute in force in 1900 which provided that all "property which shall pass . . . shall be liable to a tax of five per centum of its value above the sum of two thousand dollars." *In re Inheritance Tax*, 7 Ohio N. P. 547, 5 Low. Dec. 555.

**What Relatives Exempt.**

Half-brothers are exempt from the payment of the collateral inheritance tax in force in 1900. *In re Ormsby*, 7 Ohio N. P. 542, 5 Ohio S. & C. P. Dec. 553.

The following are not exempt: A brother-in-law or sister-in-law, (*Estate of McDermott*, 48 Ohio Wkly. L. Bul. 211; *In re Thomson*, 48 Ohio Wkly. L. Bul. 212); stepsons (*In re Hooper*, 6 Low. D. 560, 4 Ohio N. P. 186); a stepsister (*In re Thomson*, 48 Wkly. L. Bul. 212); grandnieces (*In re Bates*, 7 Ohio N. P. 625, 5 Ohio S. & C. P. Dec. 547; *In re Simon*, 7 Ohio N. P. 667, 39 Wkly. L. Bul. 369); a nephew of the wife of the decedent (*In re Wolf*, 48 Ohio Wkly. L. Bul. 211); nieces of the husband of testatrix (*In re Bates*, 7 Ohio N. P. 625, 5 Ohio S. & C. P. Dec. 547).

Where the husband dies leaving his property to his wife absolutely, and on her death the property goes back to the brothers and sisters of the deceased husband, the inheritance tax is to be collected, as it is a transfer of property to brothers-in-law and sisters-in-law of the testatrix. *In re Stephenson*, 48 Ohio Wkly. L. Bul. 212; *In re McDermott*, 48 Ohio Wkly. L. Bul. 211.

**Charitable Institutions.**

Charitable institutions are liable to the tax. *In re Bates*, 7 Ohio N. P. 625, 5 Ohio S. & C. P. Dec. 547; *In re Simon*, 7 Ohio N. P. 667, 39 Wkly. L. Bul. 369.

**Bequest to Smithsonian Institute Exempt.**

In an opinion by the attorney general in 1897, it was held that the collateral inheritance tax law does not apply in the case of a bequest of a collection of specimens by a man to the Smithsonian



Institution at Washington. The attorney general said that on the face of the law the law was applicable to the bequest, but under an older statute which exempts property of the state and of the United States and also property used in the work of education from taxation of all kinds, he holds that it is exempt from the inheritance act. *In re Harris*, 38 Ohio Wkly. L. Bul. 281.

Ohio St. 1893, approved January 27, 1893, p. 14.

S. 2. When any person shall bequeath or devise any property to or for the use of father, mother, husband, wife, brother, sister, niece, nephew, lineal descendant, and adopted child, the lineal descendant of any adopted child, the wife or widow of a son, or the husband of a daughter during life or for a term of years, and the remainder to a collateral heir, or to a stranger to the blood, the value of the prior estate shall, within sixty days after the death of the testator, be appraised in the manner hereinafter provided, and deducted, together with the sum of ten thousand dollars, from the appraised value of such property, and the tax on the remainder shall be payable one year from the death of said testator, and, together with any interest that may accrue on the same, be and remain a lien on said property till paid to the state.

### Life Estate.

Where the will provided that the income of certain securities during the term of the life of the beneficiary or so long as she may remain unmarried shall be paid to her, she had a life estate interest in these securities and this life interest is an interest in the property taxable under Ohio Revised Statutes, section 2731-1. The value of the estate should be determined by the actuaries' experience tables under Ohio Revised Statutes, section 2731-12. *In re Wolf*, 48 Ohio Wkly. L. Bul. 211.

### When Interest is Contingent.

Under Ohio statute in force in 1897 taxing of an interest in a contingent devise is deferred until the interest comes in. *In re Hooper*, 6 Low. D. 560, 4 Ohio N. P. 186.

The will provided that the net income of property should be paid the widow for her life, and also to pay her so much of the principal as she may from time to time require or demand, and after her death certain other legacies are to be paid to persons not exempt from the collateral inheritance tax. The court holds that as the widow has a right to use a part of the principal of the remainder, the value of her estate in the same is not ascertainable, and therefore, the legacies over to the non-exempt persons are not taxable at present. Had the devise to the wife been simply a life estate

legacies over would be now taxable. *In re Simon*, 7 Ohio N. P. 667, 39 Wkly. L. Bul. 369.

Ohio St. 1893, p. 14, ss. 3-17, cover the assessment, collection and payment of the tax.

### **Penalty.**

Under the inheritance law a penalty of eight per cent is collectable in case of non-payment within a year of the death of the testatrix; but the court refused to impose a penalty on the ground that it was unjust where there had been no effort made to enforce the law. As the direct inheritance tax was declared unconstitutional it was supposed that the collateral inheritance tax would meet the same fate. When the collateral inheritance tax was finally declared valid the court held that the executors were not negligent in failing to pay the tax before the decision of the court, and that there was no basis for the imposition of a penalty. *In re Bates*, 7 Ohio N. P. 625, 5 Ohio S. & C. P. Dec. 547.

### **The Void Direct Inheritance Statute of 1894.**

Ohio St. 1894, p. 166. Approved April 20, 1894.

S. 1. Be it enacted by the general assembly of the state of Ohio, that all property within the jurisdiction of this state, and any interest therein, whether belonging to inhabitants of this state or not, and whether tangible or intangible, including annuities, which shall pass by will or by the intestate laws of this state, or by deed, grant, sale, or gift made or intended to take effect in possession or enjoyment after the death of the grantor, to the use of the father, mother, husband, wife, brother, sister, niece, nephew, lineal descendant, adopted child, or person recognized as an adopted child and made a legal heir under the provisions of section 4182 of the Revised Statutes of Ohio, or the lineal descendant thereof, the lineal descendant of any adopted child, the wife or widow of a son, the husband of a daughter of decedent, or to any one in trust for such person or persons, shall be liable to a tax as follows, to wit: When the value of the entire property of such decedent exceeds the sum of twenty thousand dollars and does not exceed the sum of fifty thousand dollars, one per cent; when it exceeds fifty thousand dollars and does not exceed one hundred thousand dollars, one and one-half per cent; when it exceeds one hundred thousand dollars and does not exceed two hundred thousand dollars, two per cent; when it exceeds two hundred thousand dollars and does not exceed three hundred thousand dollars, three per cent when it exceeds three hundred thousand dollars and does not exceed five hundred thousand dollars, three and one-half per cent; when it exceeds five hundred thousand dollars and does not exceed one million dollars, four per cent; and when it exceeds one million dollars, five per cent; seventy-five per cent of such tax to be for the use of the state and twenty-five per cent for the use of the county wherein the same is collected; and all administrators, executors and trustees, shall be liable for all such taxes, with lawful interest, as hereinafter provided, until the

same shall have been paid as hereinafter directed. Such taxes shall become due and payable immediately upon the death of the decedent, and shall at once become a lien upon said property.

Ss. 2-13 cover the assessment, collection and payment of the tax.

This was the first progressive inheritance tax passed in this country.

### **Uniformity.**

This statute was not obnoxious to Ohio Const. a. 2, s. 26, as it was not intended to guarantee equal protection to all the inhabitants of the state. *State v. Ferris*, 53 Ohio St. 314, 41 N. E. 579, 30 L. R. A. 218, affirming 9 Ohio Cir. Ct. 298.

### **Progressive Feature Vold.**

"The act is clearly one for taxation and not for regulation, as shown by its provisions and title. The state finds no warrant in its constitution for saying that it will make a greater rate or charge for the privilege of succeeding to large estates than to smaller ones, but on the contrary this is expressly prohibited by the requirement that laws shall be for the equal protection and benefit of the people. This requirement applies as well to laws for regulation as to laws for taxation." *Per* Burket, J., in *State v. Ferris*, 53 Ohio St. 314, 340, 41 N. E. 579, 30 L. R. A. 218, affirming 9 Ohio Cir. Ct. 298.

This decision is clearly against the weight of authority in this country and may well be confined in its effect to the particular law construed. Other general statements in the opinion as to the invalidity of progressive taxes may well be denominated dicta unnecessary to the decision of the case.

### **Exemptions Unequal.**

The Ohio bill of rights, s. 2, provides as follows: "All political power is inherent in the people. Government is instituted for their equal protection and benefit." The act of 1894 is in direct conflict with this section of the bill of rights. "This statute is in direct conflict with this section of the bill of rights. If government is instituted for the equal protection and benefit of the people, it follows that laws which are passed under a government so instituted must likewise be for the equal protection and benefit of the people. This statute fails to protect equally the people who exercise the right and privilege of receiving or succeeding to

property. The right to receive the first twenty thousand dollars of an estate not exceeding that sum is protected from taxation, while the right to receive the first twenty thousand dollars of an estate exceeding that sum is taxed the sum of two hundred dollars. This is not equal protection. Again, the right to receive fifty thousand dollars' worth of property of an estate not exceeding that sum is taxed five hundred dollars, while the right to receive fifty thousand dollars of an estate exceeding that sum is seven hundred and fifty dollars. This is not equal protection. The same may be said of the other gradations provided for in the statute.

"The right or privilege of receiving or succeeding to property is valuable in proportion to the value of the property received. It cannot be consistently said that the right to receive twenty thousand dollars is of no value, and that the right to receive twenty thousand and one dollars is of the value of two hundred dollars and one cent.

"Again, he who uses the right or privilege of receiving property of the value of twenty thousand and one dollars, and pays therefor a tax of two hundred dollars and one cent, is not equally benefited for the tax paid, as he who uses the same right or privilege of receiving property of the value of twenty thousand dollars, without paying any tax whatever for the use of such right. The exemption of twenty thousand dollars, and the increase of the per cent as the value of the estate increases, renders this statute unconstitutional.

"Our constitution requires equality in our tax laws, and also equality in their execution as near as may be. The only exemption allowed, as to taxation of property, is personal property to the amount of two hundred dollars to each individual, and certain other property devoted to public or charitable uses. Two hundred dollars in value to each individual is the extent to which the legislature has the power to exempt personal property from taxation. The constitution must be regarded as consistent with itself throughout, and as section 2 of article 12 permits an exemption from taxation of personal property not exceeding two hundred dollars, a construction of section 2 of the bill of rights is thereby evinced to the effect that in taxation of subjects other than property, an exemption up to two hundred dollars in value would be regarded as for the equal protection and benefit of the people. The exemption must be equally for all, and the rate per cent must be the same on all estates. There can be no discrimination in favor of the rich or poor. All stand upon an equality under the provisions

of the constitution, and it is this equality that is the pride and safeguard of us all." *Per* Burket, J., in *State v. Ferris*, 53 Ohio St. 314, 41 N. E. 579, 30 L. R. A. 218. The court emphasizes the inequalities resulting from the particular mode of exemption and progression, rather than the inequality of progressive taxation. If the first \$20,000 of every estate had been exempt, if the next \$30,000 had always been subjected to the lowest rate, if the next higher rate had been applied only to the excess above \$50,000, and so on throughout the scale, the court might well have held the statute valid.

Ohio St. 1896, p. 374, approved April 27, 1896, provided for refunding of money paid in on account of the direct inheritance tax of 1894.

### **Amendments to the Collateral Inheritance Tax.**

Ohio St. 1894, p. 169, approved April 20, 1894, amended Ohio St. 1893, p. 14, sections 1, 2, 4, 9, 14, 15.

**Discriminations among collateral kindred** in the Ohio St. 1894, p. 169, are upheld. "The discrimination is based upon, and justified by, the fact that there are degrees in collateral kinship." *Hagerty v. State*, 55 Ohio St. 613, 45 N. E. 1046, affirming 12 C. C. R. 606, 5 Ohio Cir. Dec. 701.

The exemption of kindred direct or collateral made in the Ohio statute is not obnoxious to the constitution as rendering the law unequal in its application and operation. "The exemptions seem to be made in favor of those who may have contributed, directly or indirectly, to the accumulation of the estate, the succession to which is taxed as father and mother, brother and sister, and their immediate descendants, nephew and niece, if the estate be ancestral; also husband and wife and lineal descendants, if it be the joint accumulation of a family, and an adopted child, wife or widow of a son and husband of a daughter are rightfully included in the same category. This would seem to be a better distinction, supported upon stronger moral grounds, than if made only between direct descendants and collaterals." *Dyer v. Hagerty* (1896), 5 Ohio Cir. Dec. 701, 12 Ohio Cir. Ct. 606.

### **Sales.**

The act provided that all property "which shall pass by will . . . sale or gift" shall be subject to tax; and it was claimed that this right invaded the owner's right to sell and convey property. But the meaning of the word "sale" as used in the statute includes

only transactions which though in form sales are in fact gifts. Since the act is within the legislative power granted and not within the letter or spirit of any limitation thereof, it is valid. *Hagerty v. State*, 55 Ohio St. 613, 626, 45 N. E. 1046, affirming 12 C. C. R. 606.

Ohio St. 1900, p. 101, approved April 6, 1900, amends Ohio St. 1893, s. 1, by exempting from taxation property passing to the state or any municipal corporation in Ohio or to public institutions of learning or other institutions of charitable or exclusively public purposes.

Charitable corporations organized under the laws of other states are not included in this exemption although they have agencies in Ohio. *Humphreys v. State*, 70 Ohio St. 67, 101 Am. St. 888, 70 N. E. 957, 65 L. R. A. 776, affirming 13 Low. D. 168, 1 C. C. N. S. 1, 14 Cir. D. 238.

**An exemption of foreign charitable corporations** is not obnoxious to the provisions of the fourteenth amendment to the federal constitution, s. 1, "that no state shall deny to any person within its jurisdiction the equal protection of the laws," as it is settled that a corporation is not a citizen within the meaning of this clause of the federal constitution. Furthermore, the legislature has the right in laying taxes to classify corporations as has been done in this state in recent years, and can classify resident corporations in one class and foreign corporations in another. *Humphreys v. State*, 70 Ohio St. 67, 87, 101 Am. St. 888, 70 N. E. 957, 65 L. R. A. 776, affirming 13 Low. D. 168, 1 C. C. N. S. 1, 14 Cir. D. 238.

**An exemption of domestic corporations** and not foreign corporations is not obnoxious to Ohio constitution or bill of rights, s. 2, which forbids conferring privileges and immunities beyond the power of the general assembly to alter, revoke or repeal. The constitution was adopted by the people of Ohio as their charter of rights of restraint and it is not charged with the care of non-resident persons or corporations. *Humphreys v. State*, 70 Ohio St. 67, 85, 101 Am. St. 888, 70 N. E. 957, 65 L. R. A. 776, affirming 13 Low D. 168, 1 C. C. N. S. 1, 14 Cir. D. 238.

### **The Direct Inheritance Act of 1904.**

**Ohio St. 1904, p. 398, approved April 25, 1904.**

S. 1. The right to succeed to or inherit property within the jurisdiction of this state, and any interest therein, whether belonging to inhabitants of this

state or not, and whether tangible or intangible, including annuities, which shall pass by will or by the inheritance laws of this state, or by deed, grant, sale or gift made or intended to take effect in possession or enjoyment after the death of the grantor, to the use of the father, mother, husband, wife, brother, sister, niece, nephew, lineal descendant, adopted child, or person recognized as an adopted child and made a legal heir under the provisions of section 4182 of the Revised Statutes of Ohio, of the lineal descendant thereof, the lineal descendant of any adopted child, the wife or widow of a son, the husband of a daughter of a descendant, or to any one in trust for such person or persons, shall be taxed as follows, to wit: Upon the value of the property exceeding three thousand dollars, succeeded to or inherited by any person, two per centum on such excess; such tax to be borne by the person so succeeding to or inheriting the same in the manner herein provided. And all administrators, executors and trustees, shall be liable for all such taxes, with interest, as hereinafter provided, until the same shall have been fully paid. Such taxes shall become due and payable immediately upon the death of the decedent, and shall at once become a lien upon said property.

### **Not Retroactive.**

This act is not retroactive and applies only to rights arising on the death occurring on or subsequently to the date of its approval. So where the death occurred before the act was passed, but the property was left to a life tenant who died after the passage of the statute, and where the remainder was contingent and the persons who would take could not be ascertained until the death of the life tenant, it was claimed that the succession was not complete until the property was distributed and that the succession is subject to the tax in force at the time of distribution. The court, however, finds that the right to inherit is what is taxed, that various provisions of the statute show that the statute was intended to have only a prospective operation, as, for instance, that the tax becomes due and payable immediately upon the death of the decedent. *Eury v. State*, 72 Ohio St. 448, 454, 74 N. E. 650.

Where the will provides that the estate shall be held in trust and after the death of the life tenant on the final settlement of the estate the residue shall be paid to the persons who shall then be the heirs-at-law of the testator, the Ohio statute of 1904 covers the gift to the heirs where the testator died prior to its enactment, but his estate was still for the most part undistributed at the date of the passage of the statute. *Hostetter v. State*, 26 Ohio Cir. Ct. 702.

### **Provisions for Notice on Appraisal Valid.**

This act is not unconstitutional because section 9 gives the probate court power to order an appraisement without notice, as

sections 8 and 11 provide for a review of all matters before the probate court and for appeal, and these provisions give ample remedy and provide "a day in court" for all who may consider themselves aggrieved. *Hostetter v. State*, 26 Ohio Cir. Ct. 702.

### Validity of Exemptions.

The exemptions in this act are not in conflict with the Ohio constitution or bill of rights. *State v. Guilbert*, 70 Ohio St. 229, 255, 71 N. E. 636.

"An excise tax which operates uniformly throughout the state and bears equally upon all persons standing in the same category does not deprive any of equal protection of the laws." *Per Spear, C. J.*, in *State v. Guilbert*, 70 Ohio St. 229, 255, 71 N. E. 636.

Ohio St. 1904, being a tax upon the right to inherit or succeed to property and not a tax upon property, is not affected by the limitations of Ohio constitution, article 12, section 2. "Such right is derived from and regulated by municipal law; it arises from the relation of the individual to the state, and is not an inherent or constitutional right. It follows that in assessing a tax upon such right or privilege, the state may lawfully measure or fix the amount of the tax by referring to the value of the property passing, and is not precluded from this power by the provision of the constitution requiring uniformity and equality of taxation."

The only question which the court felt was open to it related to the matter of exemptions. It was contended that the act was not uniform in that it exempts from its operation all inheritances which do not exceed \$3,000 in value and imposes a burden on such as are above that sum. The court says, "We think there are two answers to this objection. The person who inherits six thousand dollars has three thousand exempt; the person who inherits three thousand dollars has three thousand dollars exempt. They are on a perfect equality in that regard. The same reasoning applies where it happens that the smaller inheritance falls below three thousand dollars. As well might it be urged that the law which exempts from execution homesteads of the heads of families of one thousand dollars in value is invalid on the ground of inequality of privilege because one debtor's homestead may not reach one thousand dollars in value while that of another may. It is to be borne in mind that the act does not create a classification of persons for the purpose of imposing a tax on that class. It is not a tax on persons at all. If it is felt more by some than by others, this is owing merely to



the fact of the differing circumstances which surround the different persons. No person, nor no set of persons, is selected arbitrarily or otherwise for the imposition of burdens or for relieving of burdens."

Furthermore, the court holds that as the tax is an excise tax and the authority to impose the tax is conferred by the general grant of legislative power, that the selection of the subjects on which the tax will be imposed must be within the legislative competency.

To say that the mere fact of inclusion in the one case and exclusion in the other constitutes a reason for holding the law invalid, is to say that no excise tax can be lawfully levied upon any privilege until all privileges on which it would be possible to lay such tax have been included within its terms. If this proposition were established it is difficult to say why it would not invalidate all the excise laws of the state, many of which have been subjected to judicial scrutiny and have been sustained. *State v. Guilbert*, 70 Ohio St. 229, 250, 71 N. E. 636.

The validity of the Ohio statute of 1904 and the tax assessed thereunder was brought in question by quo warranto. It was suggested that the court was without authority to pass on the constitutional question under these proceedings. The court remarks that if it is true that relief could not be granted the petitioner in case the act should be held invalid because he had chosen the wrong form of action, still that fact but affords another reason for sustaining the demurrer in the case, since the court has full original jurisdiction in quo warranto and therefore jurisdiction to entertain and act upon the petition. *State v. Guilbert*, 70 Ohio St. 229, 255, 71 N. E. 636.

### **Repeal of the Act of 1904.**

Ohio St. 1906, c. 229, 98 Ohio Laws, p. 229.

AN ACT TO REPEAL AN ACT ENTITLED, "An Act to impose a tax upon the right to succeed to, or inherit property," passed April 25, 1904, 97 Ohio Laws 398-400.

S. 1. That the act entitled 'An act to impose a tax upon the right to succeed to, or inherit property,' passed April 25, 1904, 97 Ohio Laws 398-400, be and the same are hereby repealed, except as to estates in which the inventory has already been filed at the date of the passage of this act. [Passed April 2, 1906.]

### **Valid in Part.**

Where the Ohio statute of 1906 provided for the repeal of the Ohio inheritance law "except as to estates in which the inventory has

already been filed at the date of the passage of this act," and where this exemption was void, the court holds that the whole act need not be declared unconstitutional as the title of the act does not leave room for even suspicion that the exception was an inducement to the repeal; and the two objects of the act may well be taken separately. *Friend v. Levy*, 76 Ohio St. 26, 50, 80 N. E. 1036.

### **"Except as to Estates in which the Inventory has Already Been Filed."**

This act provides that the statute of 1904 be repealed "except as to estates in which the inventory has already been filed at the date of the passage of this act." The court holds that this exception in the statute is unequal, and therefore void, within the decision in *State v. Ferris*, 53 Ohio St. 314. *Friend v. Levy*, 76 Ohio St. 26, 49, 80 N. E. 1036.

### **Effect of Repeal.**

Where the Ohio inheritance law of 1904 was repealed by the statute of 1906 without any saving clause, it is to be considered, except as to transactions passed and closed, as though it had never existed, and therefore no inheritance tax can be collected after the repeal. Ohio Revised Statutes, s. 79, which create a general saving clause, do not apply as the exception in the repealing statute clearly shows that the legislature intended that no inheritance tax should be collected after the repeal. *Friend v. Levy*, 76 Ohio St. 26, 51, 80 N. E. 1036.

## **THE PRESENT ACT.**

### **Ohio General Code of 1910.**

**S. 5331. Transfers taxable.** All property within the jurisdiction of this state, and any interests therein, whether belonging to inhabitants of this state or not, and whether tangible or intangible, which pass by will or by the intestate laws of this state, or by deed, grant, sale or gift, made or intended to take effect in possession or enjoyment after the death of the grantor, to a person in trust or otherwise, other than to or for the use of the father, mother, husband, wife, brother, sister, niece, nephew, lineal descendant, adopted child, or person recognized as an adopted child and made a legal heir under the provisions of a statute of this state, or the lineal descendants thereof, or the lineal descendants of an adopted child, the wife or widow of a son, the husband of the daughter of a decedent, shall be liable to a tax of five per cent of its value, above the sum of two hundred dollars. Seventy-five per cent of such tax shall be for the use of the state, and twenty-five per cent for the use of the county wherein it is collected. All administrators executors and trustees, and any such grantee

under a conveyance made during the grantor's life, shall be liable for all such taxes, with lawful interest as hereinafter provided, until they have been paid as hereinafter directed. Such taxes shall become due and payable immediately upon the death of the decedent and shall at once become a lien upon the property, and be and remain a lien until paid. (94 v. 101, par. 1.)

[See notes to the Acts of 1893 and 1904, *ante*, pp. 996, 1004.]

### **Nature.**

This act is not a tax upon property but upon the right to receive property and to have it transferred. The statute does not impose the tax upon property directly simply because it provides that administrators, executors and trustees shall be liable for all such taxes. *Humphreys v. State*, 70 Ohio St. 67, 84, 101 Am. St. 888, 70 N. E. 957, 65 L. R. A. 776, affirming 13 Low. D. 168, 1 C. C. N. S. 1, 14 Cir. D. 238.

S. 5332. **Exemptions.** The provisions of the next preceding section shall not apply to property, or interests in property, transmitted to the state of Ohio under the intestate laws of the state, or embraced in a bequest, devise, transfer or conveyance to, or for the use of the state of Ohio, or to or for the use of a municipal corporation or other political subdivision thereof for exclusively public purposes, or public institutions of learning, or to or for the use of an institution in this state for purpose only of public charity or other exclusively public purposes. The property, or interests in property so transmitted or embraced in such devise, bequest transfer or conveyance shall be exempt from all inheritance and other taxes while used exclusively for any of such purposes. (94 v. 101, par. 1.)

[See *ante*, pp. 996, 1003.]

S. 5333. **Particular estates and remainders.** When a person bequeaths or devises property to or for the use of father, mother, husband, wife, brother, sister, niece, nephew, lineal descendant, adopted child, the lineal descendant of an adopted child, the wife or widow of a son, or the husband of a daughter during life or for a term of years, and the remainder to a collateral heir, or to a stranger to the blood, the value of the prior estate, shall be appraised, within sixty days after the death of the testator, in the manner hereinafter provided, and deducted, together with the sum of two hundred dollars, from the appraised value of such property. (91 v. 170, par. 2.)

[See notes to the Act of 1893, *ante*, p. 998.]

### **Annuity Taxed as Received.**

Where the will directed the executors to purchase bonds of such an amount that the interest would be sufficient to pay the wife eight thousand dollars (\$8,000) a year the court says that this is not an annuity the present value of which can be fixed. Here the legacy grows out of the estate each quarter and on the failure of sufficient interest part of the principal may be taken but even that part adheres to the estate, grows out of it and cannot be separated from it. The estate is therefore a trust fund in the

hands of the executors for the payment of the quarterly instalments of her legacy. It is the case of trustee and beneficiary, and not debtor and creditor.

It is therefore clear that until received by the widow each quarter the legacy remains merged in the estate as a part thereof, that the taxes paid by the estate are all that can be lawfully exacted, and that she cannot be taxed on any part of her legacy until after its receipt by her. *Chisholm v. Shields*, 67 Ohio St. 374, 66 N. E. 93.

**S. 5334. Gifts to executors and trustees.** When a decedent appoints one or more executors or trustees, and instead of their lawful allowance makes a bequest or devise of property to them which would otherwise be liable to such tax, or appoints them his residuary legatees, and said bequests, devises, or residuary legacies exceed what would be a reasonable compensation for their services, such excess shall be liable to such tax, and the probate court having jurisdiction of their accounts shall fix such compensation. (90 v. 15, par. 3.)

**S. 5335. Payment. — Interest. — Discount.** Taxes imposed by this subdivision of this chapter shall be paid into the treasury of the county in which the court having jurisdiction of the estate or accounts is situated, by the executors, administrators, trustees, or other persons charged with the payment thereof. If such taxes are not paid within one year after the death of the decedent, interest at the rate of eight per cent shall be thereafter charged and collected thereon, and if not paid at the expiration of eighteen months after such death, the prosecuting attorney of the county wherein said taxes remain unpaid, shall institute the necessary proceedings to collect the taxes in the court of common pleas of the county, after first being notified in writing by the probate judge of the county of the non-payment thereof. The probate judge shall give such notice in writing. If the taxes are paid before the expiration of one year after the death of the decedent, a discount of one per cent per month for each full month that payment has been made prior to the expiration of the year, shall be allowed on the amount of such taxes. (91 v. 170, par. 4.)

**S. 5336. Tax to be deducted.** An administrator, executor, or trustee, having in charge, or trust, property subject to such law, shall deduct the tax therefrom, or collect the tax thereon from the legatee or person entitled to the property. He shall not deliver any specific legacy or property subject to such tax to any person until he has collected the tax thereon. (90 v. 15, par. 5.)

**S. 5337. Legacy charged on real estate.** When a legacy subject to such tax is charged upon or payable out of real estate, the heir or devisee, before paying it, shall deduct the tax therefrom and pay it to the executor, administrator, or trustee, and the tax shall remain a charge upon the real estate until it is paid. Payment thereof shall be enforced by the executor, administrator, or trustee, in like manner as the payment of the legacy itself could be enforced. (90 v. 16, par. 6.)

**S. 5338. Tax to be retained or apportioned.** If such legacy is given in money to a person for a limited period, such administrator, executor or trustee shall retain the tax on the whole amount. If it is not in money, he shall make an application to the court having jurisdiction of his accounts to make an apportionment, if the case require it, of the sum to be paid into his hands by such legatee on account of the tax and for such further order as the case may require. (90 v. 16, par. 7.)

**S. 5339. Power of sale.** Administrators, executors and trustees may sell so much of the estate of the deceased as will enable them to pay said tax in like manner as they are empowered to do for the payment of his debts. (90 v. 16, par. 8.)

**S. 5340. Inventory. — Payment.** Within ten days after the filing of the inventory of every such estate, any part of which may be subject to a tax under the provisions of this subdivision of this chapter, the judge of the probate court, in which such inventory is filed, shall make and deliver to the county auditor of such county a copy of the inventory; or, if it can be conveniently separated, a copy of such part of the estate, with the appraisal thereof. The auditor shall certify the value of the estate, subject to taxation hereunder and the amount of taxes due therefrom, to the county treasurer, who shall collect such taxes, and thereupon place twenty-five per cent thereof to the credit of the county expense fund, and pay seventy-five per cent thereof into the state treasury, to the credit of the general revenue fund, at the time of making his semi-annual settlement. (91 v. 170, par. 9.)

**S. 5341. Information to probate judge.** When any of the real estate of a decedent passes to another person so as to become subject to such tax, the executor, administrator or trustee of the decedent shall inform the probate judge thereof within six months after he has assumed the duties of his trust, or if the fact is not known to him within that time, then within one month from the time that it does become known to him. (90 v. 16, par. 10.)

**S. 5342. Refund to beneficiary.** When for any reason the devisee, legatee or heir who has paid such tax relinquishes or reconveys a portion of the property on which it was paid, or it is judicially determined that the whole or part of such tax ought not to have been paid, the tax, or the due proportional part thereof shall be repaid to him by the executor, administrator or trustee. (90 v. 16, par. 11.)

**S. 5343. Appraisal.** The value of such property, subject to said tax, shall be its actual market value as found by the probate court. If the state, through the prosecuting attorney of the proper county, or any person interested in the succession to the property, applies to the court, it shall appoint three disinterested persons, who, being first sworn, shall view and appraise such property at its actual market value for the purposes of this tax, and make return thereof to the court. The return may be accepted by the court in a like manner as the original inventory of the estate is accepted, and if so accepted, it shall be binding upon the person by whom this tax is to be paid, and upon the state. The fees of the appraisers shall be fixed by the probate judge and paid out of the county treas-

ury upon the warrant of the county auditor. In case of an annuity or life estate, the value thereof shall be determined by the so-called actuaries' combined experience tables and five per cent compound interest. (90 v. 16, par. 12.)

[See notes to the Act of 1904, *ante*, p. 1004.]

### **Appeal.**

Under Ohio Revised Sts. s. 2731-33 and s. 6408, where the probate court fixes the inheritance tax, either party may appeal and the state may appeal without filing any security under Revised Sts., s. 213, s. 6411 and s. 5227. *Humphreys v. State*, 70 Ohio St. 67, 101 Am. St. 888, 70 N. E. 957, 65 L. R. A. 776, affirming 13 Low. D. 168, 1 C. C. N. S. 1, 14 Cir. D. 238.

**S. 5344 Jurisdiction of probate court.** The probate court, having either principal or auxiliary jurisdiction of the settlement of the estate of the decedent, shall have jurisdiction to hear and determine all questions in relation to such tax that arises, affecting any devise, legacy or inheritance under this subdivision of this chapter, subject to appeal as in other cases, and the prosecuting attorney shall represent the interests of the state in such proceedings. (90 v. 17, par. 13.)

[See notes to the Act of 1904, *ante*, p. 1004.]

**S. 5345. Reports.** Each probate judge, at least once in six months, shall render to the county auditor a statement of the property within the jurisdiction of his court that has become subject to such tax during such period, the number and amount of such taxes as will accrue during the next six months, so far as they can be determined from the probate records, and the number and amount thereof due and unpaid. Each probate judge shall keep a separate record, in a book to be provided for that purpose, of all cases arising under the provisions of this subdivision of this chapter. (91 v. 171, par. 14.)

**S. 5346. Fees.** The fees of officers having duties to perform under the provisions of this subdivision of this chapter, shall be paid by the county from the county expense fund thereof and shall be the same as allowed by law for similar services. In ascertaining the amounts due the state, seventy-five per cent of the cost of collection and other necessary and legitimate expenses incurred by the county in the collection of such taxes, shall be charged to the state and deducted from the amount of taxes to be paid into the state treasury. (91 v. 171, par. 15.)

**S. 5347. Settlement of account.** A final settlement of the account of an executor, administrator or trustee shall not be accepted or allowed by the probate court unless it shows, and the judge of that court finds, that all taxes imposed by the provisions of this subdivision of this chapter, upon any property or interest therein, belonging to the estate to be settled by such account, have been paid. The receipt of the county treasurer shall be the proper voucher for such payment. (90 v. 17, par. 16.)

**S. 5348. Definition.** The word "property" as used in this subdivision of this chapter includes real and personal estate, any form of interest therein, and annuities. (90 v. 17, par. 17.)

## OKLAHOMA.

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### In General.

Oklahoma did not wait long after its admittance to the Union before adopting an inheritance tax law. This law was enacted at the 1907-8 session of the Oklahoma legislature and will not disappoint those who have learned to look to Oklahoma for radical and complicated legislation. The rather startling, though perhaps not wholly surprising feature of the law, in view of what supposedly conservative states have done, is that there is a progressive feature which results in the confiscation of all in excess of certain amounts, and not very large amounts at that. Exemptions apply to each individual inheritance and not to the estate as a whole. We hesitate to suggest that under a literal reading of the statute the rate of tax continues to increase even after 100 per cent is reached.

Oklahoma taxes both stock and registered bonds of Oklahoma corporations owned by non-residents and the corporation itself is responsible for the tax if it transfers securities before the tax is paid.

This remarkable statute suggests interesting possibilities. Suppose a rich Illinois resident shows his appreciation of his best friend by naming him his executor, and leaves him in addition a handsome legacy of \$2,000,000 worth of stock in an Oklahoma corporation. The executor is not familiar with the gyrations of inheritance tax laws, and as he wishes to receive his dividends, he sends along the stock for transfer. Someone has borrowed our table of logarithms and our higher mathematics are a little rusty, but under this handicap we figure that \$1,951,930 is a very close approximation to the Oklahoma tax on this legacy.

The exhilarating feature of the situation is not that he has only \$48,070 of the \$2,000,000 left when Oklahoma is through, but is that a tax of 10 per cent is still due on the legacy to the state of Illinois, and the executor is personally responsible for the payment of the entire amount!

This act has yet to be passed upon by the Oklahoma supreme court, — a court which, it may be noted, has already shown much sanity. It is hard to believe that the act could be sustained even under the remarkable constitution of this state.

### List of Statutes.

- 1907-08. Statutes of Oklahoma, c. 81, a. 11, p. 733.  
1908. Gen. Statutes of Oklahoma, a. 2, p. 1242, ss. 6044-6082.  
1909. Oklahoma Compiled Laws, c. 98, a. 14, p. 1549.

### Constitutional Limitations.

#### Oklahoma Constitution, 1907, a. 10.

S. 5. The power of taxation shall never be surrendered, suspended, or contracted away. Taxes shall be uniform upon the same class of subjects.

S. 12. The legislature shall have power to provide for the levy and collection of license, franchise, gross revenue, excise, income, collateral and direct inheritance, legacy, and succession taxes; also graduated income taxes, graduated collateral and direct inheritance taxes, graduated legacy and succession taxes; also stamp, registration, production, or other specific taxes.

### THE PRESENT ACT.

Okla. St. 1907-08, c. 81, a. 11. Approved May 26, 1908.

AN ACT PROVIDING FOR A TAX ON GIFTS, INHERITANCES, BEQUESTS, LEGACIES, devices and successions in certain cases; and declaring an emergency.

The text of this statute is printed below from the Compiled Laws of 1909.

The Oklahoma statute has been passed upon recently by the district court of Oklahoma. The state officials are at present working under the interpretation of the law as laid down by the district judge, L. M. Poe, who sustained its constitutionality and decided certain disputed points as to the method of computation. Judge Poe's opinion is not reported. It has been filed for record in the office of the state auditor.

#### Oklahoma Compiled Laws of 1909, Art. xiv.

S. 7712. **Tax on gifts, inheritances, etc.** A tax shall be and is hereby imposed upon any transfer of any property, real, personal, or mixed, or any interest therein, or income therefrom in trust or otherwise, to any person, association, or corporation, except corporations of this state organized under its laws solely for religious, charitable, or educational purposes, which shall use the property so transferred exclusively for the purposes of their organization within this state in the following cases: When the transfer is by will or by the intestate laws of this state from any person dying possessed of the property while a resident of the state. When a transfer is by will or intestate law, of property within the state or within its jurisdiction and the decedent was a non-resident of the state at the time of his death. When the transfer is of property made by a resident or by a non-resident, when such non-resident's property is within this state or within its jurisdiction, by deed, grant, bargain, sale, or gift, made in contemplation of the death of the grantor, vendor, or donor, or intended to take



effect in possession or enjoyment at or after such death. Such tax shall be imposed when any such person or corporation becomes beneficially entitled, in possession or expectancy to any property or the income thereof, by any such transfer whether made before or after the passage of this act; provided, that property or estates which have vested in such persons or corporations before this act takes effect shall not be subject to the tax. Whenever any person or corporation shall exercise a power of appointment derived from any disposition of property made either before or after the passage of this act, such appointment, when made shall be deemed a transfer taxable under the provisions of this act in the same manner as though the property to which such appointment relates belonged absolutely to the donee of such power and had been bequeathed or devised by such donee by will; and whenever any person, or corporation possessing such power of appointment so derived shall omit or fail to exercise the same within the time provided therefor, in whole or in part, a transfer taxable under the provisions of this act shall be deemed to take place to the extent of such omission or failure, in the same manner as though the persons or corporations thereby becoming entitled to the possession or enjoyment of the property to which such power related had succeeded thereto by a will of the donee of the power failing to exercise such power, taking effect at the time of such omission or failure. The tax so imposed shall be upon the clear market value of such property at the rates hereinafter prescribed, and only upon the excess of the exemptions hereinafter granted. (L. 1907-8, p. 733.)

**S. 7713. Rate — primary — by classes.** When the property or any beneficial interest therein passes by any such transfer, where the amount of the property shall exceed in value the exemptions hereinafter specified, the primary rates of taxation hereinafter imposed shall apply as follows:

On the first five thousand dollars of such excess in class one; on first two thousand dollars of such excess in classes two and three; on the first five hundred dollars of such excess in classes four and five and shall be:

**Class 1:** Where the person or persons entitled to any beneficial interest in such property shall be the husband, wife, lineal issue, lineal ancestors of the decedent or any child adopted as such in conformity with the laws of this state, or any child to whom such decedent for not less than ten years prior to such transfer stood in the mutually acknowledged relation of a parent; Provided, however, such relationship began at or before the child's fifteenth birthday, and was continuous for said ten years thereafter, or any lineal issue of such adopted or mutually acknowledged child, at the rate of one per centum of the clear value of such interest in such property.

**Class 2.** Where the person or persons entitled to any beneficial interest in such property shall be the brother or sister of a descendant of a brother or sister of the decedent, a wife or widow of a son or the husband of a daughter of the decedent, at the rate of one and one-half per centum of the clear value of such interest in such property.

**Class 3:** Where the person or persons entitled to any beneficial interest in such property shall be the brother or sister of the father or mother, or a descendant of a brother or sister of the father or mother of the decedent, at the rate of three per centum of the clear value of such interest in such property.

**Class 4:** Where the person or persons entitled to any beneficial interest in such property shall be the brother or sister of the grandfather or grandmother

or a descendant of the brother or sister of the grandfather or grandmother of the decedent, at the rate of four per centum of the clear value of such interest in such property.

**Class 5:** Where the person or persons entitled to any beneficial interest in such property shall be in any other degree of collateral consanguinity than is hereinbefore stated, or shall be a stranger in blood to the decedent, or shall be a body politic, or corporate, at the rate of five per centum of the clear value of such interest in such property. (L. 1907-8, p. 734.)

**S. 7714. Primary rate increased.** The foregoing rates in section 7713 are for convenience termed the primary rates. Upon all in excess of five thousand dollars in class one, the primary rate provided for herein shall be increased one one-hundred twenty-fifth ( $1/125$ ) of one per centum for every one hundred dollars increase in valuation of such excess. Upon all in excess of two thousand dollars in classes two and three the primary rate provided for herein shall be increased one-fiftieth of one per centum for every one hundred dollars' increase in valuation of such excess. Upon all in excess of five hundred dollars in classes four and five, the primary rate provided for herein shall be increased one-tenth of one per centum for every one hundred dollars increase in valuation for such excess. (L. 190708, p. 735.)

**S. 7715. Exemptions.** The following exemptions from the tax are hereby allowed:—

All property transferred to corporations of this state organized under its laws solely for religious, charitable, or educational purposes which shall use the property so transferred exclusively for the purposes of their organization within the state shall be exempt.

Property of the clear value of ten thousand dollars transferred to the widow of the decedent, and five thousand dollars transferred to each of the other persons described in the first division of section 7713, shall be exempt.

Property of the clear value of five hundred dollars, transferred to each of the persons described in the second subdivision of section 7713, shall be exempt.

Property of the clear value of two hundred and fifty dollars, transferred to each of the persons described in the third subdivision of section 7713, shall be exempt.

Property of the clear value of one hundred and fifty dollars, transferred to each of the persons described in the fourth subdivision of section 7713, shall be exempt.

Property of the clear value of one hundred dollars, transferred to each of the persons and corporations as described in the fifth subdivision of section 7713, shall be exempt. (L. 1907-8, p. 736.)

**S. 7716. A lien—how paid.** Every such tax shall be and remain a lien upon the property transferred until paid and the person to whom the property is so transferred and the administrators, executors, and trustees of every estate so transferred, shall be personally liable for such tax until its payment. The tax shall be paid to the treasurer of the county in which the county court is situated having jurisdiction as herein provided: and said treasurer shall give and every executor, administrator, or trustee shall take duplicate receipts from him of such payments, one of which he shall immediately send to the state auditor, whose duty it shall be to charge the treasurer so receiving the tax with

the amount thereof, and to seal said receipt with the seal of his office, and countersign the same and return it to the executor, administrator or trustee, whereupon it shall be a proper voucher in the settlement of his accounts; but no executor, administrator or trustee shall be entitled to a final accounting of an estate, in settlement of which a tax is due under the provisions of this act, unless he shall produce a receipt so sealed and countersigned by the state auditor or a copy thereof certified by him, or unless a bond shall have been filed, as prescribed by section 7720. All taxes imposed by this act shall be due and payable at the time of the transfer except as hereinafter provided. Taxes upon the transfer of any estate, property, or interest therein, limited, conditioned, dependent, or determinable upon the happenings of any contingency or future event, by reason of which the fair market value thereof cannot be ascertained at the time of the transfer, as herein provided, shall accrue and become due and payable when the beneficiaries shall come into actual possession or enjoyment thereof. (L. 1907-8, p. 736.)

**S. 7717. Discount or interest.** If such tax is paid within one year from the accruing thereof, a discount of five per centum shall be allowed and deducted therefrom. If such tax is not paid within eighteen months from the accruing thereof, interest shall be charged and collected thereon at the rate of ten per centum per annum from the time the tax accrued; unless by reason of claims made upon the estate, necessary litigation, or other unavoidable cause of delay, such tax shall not be determined and paid as herein provided, until the cause of such delay is removed, after which ten per centum shall be charged. In all cases where a bond shall be given under the provisions of section 7720, interest shall be charged at the rate of six per centum from the accrual of the tax, until the date of payment thereof. (L. 1907-8, p. 737.)

**S. 7718. Administrator may sell property to pay.** Every executor, administrator, or trustee shall have full power to sell so much of the property of the decedent as will enable him to pay such tax in the same manner as he might be entitled by law to do for the payment of the debts of the testator, or intestate. Any such administrator, executor, or trustee having in charge or in trust, any legacy or property for distribution, subject to such tax, shall deduct the tax therefrom; and within thirty days therefrom shall pay over the same to the county treasurer, as herein provided. If such legacy or property be not in money, he shall collect the tax thereon upon the appraised value thereof, from the person entitled thereto. He shall not deliver or be compelled to deliver any specific legacy or property subject to tax under this act, to any person until he shall have collected the tax thereon. If any such legacy shall be charged upon or payable out of real property, the heir, or devisee, shall deduct such tax therefrom and pay it to the administrator, executor, or trustee, and the tax shall remain a lien or charge on such real property until paid, and the payment thereof shall be enforced by the executor, administrator, or trustee, in the same manner that payment of the legacy might be enforced, or by the county attorney under section 7730. If any such legacy shall be given in money to any such person for a limited period, the administrator, executor, or trustee shall retain the tax upon the whole amount, but if it be not in money, he shall make application to the court having jurisdiction of an accounting by him to make an apportion-

ment if the case require it, of the sum to be paid into his hands by such legatees, and for such further order relative thereto as the case may require. (L. 1907-8, p. 737.)

**S. 7719. When debt proved after tax paid.** If any debt shall be proved against the estate of the decedent after the payment of any legacy, or distributive share thereof, from which any such tax has been deducted, or upon which it has been paid by the person entitled to such legacy or distributive share, and such person is required by the order of the county court having jurisdiction thereof on notice to the state auditor to refund the amount of such debts or any part thereof, an equitable proportion of the tax shall be repaid to him by the executor, administrator or trustee, if the tax has not been paid to the county treasurer, or repaid by such treasurer, or state treasurer, if such tax has been paid to him. When any amount of said tax shall have been paid erroneously into the state treasury, it shall be lawful for the state auditor, upon satisfactory proofs presented to him of the facts, to require the amount of such erroneous or illegal payment to be refunded to the executor, administrator, trustee, person or persons who have paid any such tax in error, from the treasury; or the said state auditor may order, direct and allow the treasurer of any county to refund the amount of any illegal or erroneous payment of such tax out of the funds in his hands or custody to the credit of such taxes, and credit him with the same in his quarterly account rendered to the state auditor, under this act. Provided, however, that all applications for such refunding of erroneous taxes shall be made within one year from the payment thereof, or within one year after the reversal or modification of the order fixing such tax. (L. 1907-8, p. 738.)

**S. 7720. Deferred payment of tax — bond to secure.** Any beneficiary of any property chargeable with a tax under this act, and any executors, administrators and trustees thereof, may elect, within eighteen months from the date of the transfer thereof as herein provided, not to pay such tax until the person or persons beneficially interested therein shall come into the actual possession or enjoyment thereof. The person or persons so electing shall give a bond to the state in a penalty of three times the amount of any such tax, with such securities as the county court of the proper county may approve, conditioned for the payment of such tax and interest thereon at such time or period as the person or persons beneficially interested therein may come into the actual possession or enjoyment of such property, which bond shall be filed in the county court. Such bond must be executed and filed and a full return of such property upon oath made to the county court within one year from the date of such transfer thereof as herein provided, and such bond must be renewed when ordered by the court. (L. 1907-8, p. 739.)

**S. 7721. Bequest to executor in lieu of commissions — taxed — when.** If a testator bequeaths property to one or more executors or trustees in lieu of their commissions or allowances, or makes them his legatees to any amount exceeding the commission or allowance prescribed by law for an executor or trustee, the excess in value of the property so bequeathed, above the amount of commissions or allowances prescribed by law in similar cases, shall be taxable by this act. (L. 1907-8, p. 739.)

**S. 7722. Foreign administrator or trustee.—Duty.** If a foreign executor, administrator or trustee shall assign or transfer any stock or obligations in this state standing in the name of a decedent or in trust for a decedent, liable to any such tax, the tax shall be paid to the treasurer of the proper county or the state auditor on the transfer thereof. No safe deposit company, bank or other institution, person or persons holding securities or assets of a decedent, shall deliver or transfer the same to the executors, administrator, or legal representatives of said decedent, or upon their order or request unless notice of the time and place of such intended transfer be served upon the state auditor at least ten days prior to the said transfer; nor shall any such safe deposit company, bank or other institution, person or persons deliver or transfer any securities or assets of the estate of a non-resident decedent without retaining a sufficient portion or amount thereof to pay any tax which may thereafter be assessed on account of the transfer of such securities or assets under the provisions of this act, unless the state auditor consents thereto in writing; and it shall be lawful for the said county treasurer or state auditor personally or by representative to examine said securities or assets at the time of such delivery or transfer. Failure to serve such notice or to allow such examination or to retain a sufficient portion or amount to pay such tax as herein provided, shall render said safe deposit company, trust company, bank or other institution, person or persons, liable to the payment of the tax due upon said securities or assets in pursuance of the provisions of this act. (L. 1907-8, p. 739.)

**S. 7723. County court's jurisdiction.** The county court of every county of the state having jurisdiction to grant letters testamentary or of administration upon the estate of a decedent whose property is chargeable with any tax under this act, or to appoint a trustee of such estate or any part thereof, or to give ancillary letters thereon, shall have jurisdiction to hear and determine all questions arising under the provisions of this act, and to do any act in relation thereto authorized by law to be done by a county court in other matters or proceedings coming within its probate jurisdiction. Every petition for ancillary letters testamentary or ancillary letters of administration, made in pursuance of the laws governing probate practice of a person to be cited as therein prescribed, and a true and correct statement of all the decedent's property in this state, and the value thereof; and upon presentation thereof the county court shall issue a citation directed to such county treasurer, and upon the return of the citation, the county court shall determine the amount of the tax which may be or become due under the provision of this act, and his decree awarding the letters may contain any provisions for the payment of such tax or the giving of security therefor, which might be made by such county court if the county treasurer were a creditor of deceased. (L. 1907-8, p. 740.)

**S. 7724. Appraisement—court to appoint appraisers.** The county court upon the application of any interested party, including the state auditor, county treasurer, or upon his own motion, shall as often as, and whenever occasion may require, appoint a competent person as appraiser to fix the fair market value at the time of transfer thereof of the property of persons whose estates shall be subject to the payment of any tax imposed by this act.

Whenever a transfer of property is made upon which there is, or in any contingency there may be, a tax imposed, such property shall be appraised at its

clear market value immediately upon the transfer or as soon thereafter as practicable. The value of every future or limited estate, income, interest or annuity dependent upon life or lives in being, shall be determined by the rule, method and standard of mortality and value employed by the commissioner of insurance in ascertaining the value of policies of life insurance, and annuities for the determination of liabilities of life insurance companies except that the rate of interest for making such computation shall be five per centum per annum.

In estimating the value of any estate, or interest in property to the beneficial enjoyment or possession whereof there are persons or corporations presently entitled thereto, no allowance shall be made in respect of any contingent incumbrance thereon, nor in respect of any contingency upon the happening of which the estate or property or some part thereof, or interest therein, might be abridged, defeated or diminished; *Provided, however*, that in the event of such incumbrance taking effect as an actual burden upon the interest of the beneficiary, or in the event of the abridgement, defeat or diminution of such estate or property or interest therein as aforesaid, a return shall be made to the person properly entitled thereto of a proportionate amount of such tax in respect to the amount or value of the incumbrance when taking effect, or so much as will reduce the same to the amount which would have been assessed in respect of the actual duration or extent of the estate or interest enjoyed. Such return of tax shall be made in the manner provided in section 7719.

Where any property shall after the passage of this act be transferred subject to any charge, estate, or interest determinable by the death of any person, or at any period ascertainable only by reference to death, the increase of benefit accruing to any person or corporation upon extinction or determination of such charge, estate or interest, shall be deemed a transfer of property taxable under the provisions of this act in the same manner as though the person or corporation beneficially entitled thereto had then acquired such increase of benefit from the person from whom the title to their respective estates or interests is derived.

When property is transferred in trust or otherwise, and the rights, interests or estates of the transferees are dependent upon contingencies or conditions whereby they may be wholly or in part created, defeated, extended or abridged, a tax shall be imposed upon such transfer at the highest rate which, on the happening of any of the said contingencies or conditions, would be possible under the provisions of this act, and such tax so imposed shall be due and payable forthwith out of the property transferred, provided, however, that on the happening of any contingency whereby the said property or any part thereof is transferred to a person or corporation exempt from taxation under the provisions of this act or to a person taxable at a less rate than the rate imposed and paid, such person or corporation shall be entitled to a return of so much of the tax imposed and paid as is the difference between the amount paid and the amount which said person or corporation should pay under the provisions of this act with legal interest from the time of payment. Such return of overpayment shall be made in the manner provided by section 7719.

Estates in expectancy which are contingent or defeasible and in which proceedings for the determination of the tax have not been taken or where the taxation thereof has been held in abeyance, shall be appraised at their full, undiminished, clear value when the persons entitled thereto shall come into the

beneficial enjoyment or possession thereof without diminution for or on account of any valuation theretofore made of the particular estates for purposes of taxation upon which said estates in expectancy may have been limited.

Where an estate for life or for years can be divested by the act or omission of the legatee or devisee, it shall be taxed as if there were no possibility of such divesting. (L. 1907-8, p. 741.)

**S. 7725. Appraiser's duty — pay.** Every such appraiser shall forthwith give notice by mail to all persons known to have claim or interest in the property to be appraised, including the county treasurer, and to such persons as the county court may by order direct, of the time and place when he will appraise such property. He shall, at such time and place, appraise the same at its fair market value, as herein prescribed, and for that purpose the said appraiser is authorized to issue subpoenas and to compel the attendance of witnesses before him and to take the evidence of such witnesses under oath concerning such property and the value thereof; and he shall make report thereof and of such value in writing, to the said county court, together with the depositions of the witnesses examined, and such other facts in relation thereto and to the said matters as the said county court may order or require. Every appraiser shall be paid on the certificate of the county court at the rate of two dollars per day for every day actually and necessarily employed in such appraisal, and his actual and necessary traveling expenses and the fees paid such witness, which fees shall be the same as those now paid to witnesses subpoenaed to attend in courts of record, by the county treasurer out of any funds he may have on his hands on account of any tax imposed under the provisions of this act. (L. 1907-8, p. 743.)

**S. 7726. Their report.** The report of the appraiser shall be made in duplicate, one of which duplicates shall be filed in the office of the county court and the other in the office of the state auditor. Upon filing such report in the county court, the county court shall forthwith give twenty days notice by mail to all persons known to be interested in the estate, including the county treasurer, of the time and place of the hearing in the matter of such report and the county court from such report and other proofs relating to any such estate shall forthwith at the time so fixed, determine the cash value of such estate and the amount of tax to which the same is liable, or the county court without appointing an appraiser upon giving twenty days notice by mail to all persons known to be interested in the estate including the county treasurer, of the time and place of hearing, may at the time so fixed hear evidence and determine the cash value of such estate and the amount of tax to which the same is liable. If the residence or post-office address of any person interested in any estate is unknown to the executor, administrator, or trustee, notice of the hearing in the matters of the report of the appraisers or notice that the county court without appointing an appraiser will determine the cash value of an estate, shall be given to all such persons by publication of such notice not less than three successive weeks prior to the time fixed for such hearing or determination in such newspaper published within the county as the court shall direct. (L. 1907-8, p. 743.)

**S. 7727. Duty of insurance commissioner.** The commissioner of insurance shall on application of any county court determine the value of any such future or contingent estates, income, or interests therein, limited, contingent, dependent or determinable upon the life or lives of the person or persons

in being upon the facts contained in such appraiser's report or upon the facts contained in the county court's finding and determination and certify the same to the county court and his certificate shall be presumptive evidence that the method of computation adopted therein is correct. (L. 1907-8, p. 744.)

**S. 7728. Of state auditor.** The state auditor or any person dissatisfied with the appraisement or assessment and determination of such tax, may apply for a rehearing thereof, before the county court, within sixty days from the fixing, assessing and determination of the tax by the county court as herein provided, on filing a written notice which shall state the grounds of the application for a rehearing. The rehearing shall be upon the records, proceedings, and proofs had and taken on the hearings as herein provided and a new trial shall not be had or granted unless specially ordered by the county court. (L. 1907-8, p. 744.)

**S. 7729. County court.—District Judge.** The county court shall immediately give notice by mail upon the determination by him as to the value of any estate which is taxable under this act and of the tax to which it is liable to all parties known to be interested therein including the state auditor. If, however, it appears at this or any stage of the proceedings that any of such parties known to be interested in the estate is an infant or an incompetent, the county court shall if the interest of such infant or incompetent is presently involved, and is adverse to that of the other persons interested therein appoint a special guardian of such infant, but nothing in this provision shall affect the right of an infant over fourteen years of age or of any one on behalf of an infant under fourteen years of age, to nominate and apply for the appointment of a special guardian of such infant at any stage of the proceedings.

Within one year after the entry of an order or decree of the county court determining the value of an estate and assessing the tax thereon, the state auditor may if he believes that such appraisal, assessment, or determination has been fraudulently, collusively, or erroneously made, make application to the judge of the district court in which the said estate is administered on for a reappraisal thereof. The district judge to whom such application is made may thereupon appoint a competent person to reappraise such estate. Such appraiser shall possess the powers, be subject to the duties, shall give the notice, and receive the compensation provided by sections 7724 and 7725. Such compensation shall be payable by the county treasurer out of any funds he may have on account of any tax imposed under the provisions of this act upon the certificate of the district judge appointing. The report of such appraiser shall be filed in the district court for which he was appointed and thereafter the same proceedings shall be taken and had by and before such district court as herein provided to be taken and had by and before the county court.

The determination and assessment of such district court shall supersede the determination and assessment of county court and shall be filed by such district court in the office of the state auditor and a certified copy thereof transmitted to the county court of the proper county. (L. 1907-8, p. 744.)

**S. 7730. Tax not paid.—Procedure.** If the treasurer of any county shall have reason to believe that any tax is due and unpaid under this act after the refusal or neglect of any person liable therefor to pay the same, he shall notify



the county attorney of the county in writing of such failure or neglect; and such county attorney if he have probable cause to believe that such tax is due and unpaid, shall apply to the county court for a citation citing the person liable to pay such tax to appear before the court on the day specified not more than three months from the date of such citation and show cause why the tax should not be paid. The judge of the county court, upon such application and whenever it shall appear to him that any such tax, accruing under this act, has not been paid as required by law, shall issue such citation, and the service of such citation, and the time, manner, and proof thereof, and the hearing and determination thereof, shall conform as near as may be to the provisions of the laws governing probate practice of this state, and whenever it shall appear that any such tax is due and payable, and the payment thereof cannot be enforced under the provisions of this act in said county court, the person or corporation from whom the same is due is hereby made liable to the county of the county court having jurisdiction over such estate or property for the amount of such tax, and it shall be the duty of the county attorney of said county in the name of such county to sue for and enforce the collection of such tax, and it is made the duty of said county attorney to appear for and act on behalf of any county treasurer, who shall be cited to appear before any county court under the provisions of this act. (L. 1907-8, p. 745.)

**S. 7731. Auditor to furnish books.** The state auditor shall furnish to each county court a book which shall be a public record, and in which he shall enter the name of every decedent (decedent) whose estate is or may become liable for such tax, and upon whose estate an application to him has been made for the issue of letters of administration, or letters testamentary, or ancillary letters, the date and place of death of such decedent (decedent) the estimated value, of the property of such decedent (decedent), the names, places, residence and relationship to him of his heirs at law, the names and places of residence of the legatees and devisees in any will of any such decedent, the amount of each legacy and the estimated value of any property devised therein and to whom devised. These entries shall be made from the date contained in the paper filed on any such application, or in any proceeding relating to the estate of the decedent (decedent). The county court shall also enter in such book, the amount of the personal property of any such decedent (decedent) as shown by the inventory thereof, when made and filed in his office, and the returns made by any appraiser appointed by him under this act, and the value of annuities, life estates, terms of years, and other property of any such decedent, or given by him in his will or otherwise, as fixed by the county court, and the tax assessed thereon, and the amounts of any receipts for payment of tax on the estate of such decedent, under this act filed with him. The state auditor shall also furnish to each county, forms for the reports to be made by such county court, which shall correspond with the entries to be made in such books. (L. 1907-8, p. 746.)

**S. 7732. County judge to report.** Each judge of county court shall on January, April, July, and October first, of each year, make a report in duplicate, upon the forms furnished by the state auditor containing all the data and matters required to be entered in such books, one of which shall be immediately delivered to the county treasurer and the other transmitted to the state auditor. (L. 1907-8, p. 747.)

**S. 7733. Treasurer to report.** Each county treasurer shall make a report, under oath to the state auditor on January, April, July and October first, of each year, of all taxes received by him under this act, stating for what estate and by whom and when paid. The form of such report may be prescribed by the state auditor. He shall at the same time pay the state treasurer all the taxes received by him under this act and not previously paid into the state treasury, and for all such taxes collected by him and not paid the state treasurer within thirty days from the times herein required he shall pay interest at the rate of ten per centum per annum. (L. 1907-8, p. 747.)

**S. 7734. Treasurer may agree on extension.—When.** The county treasurer, with the consent of the state auditor and the attorney general, expressed in writing, is authorized to enter into an agreement with the executor, administrator or trustee of any estate therein situate in which remainders or expectant estates have been of such a nature or so disposed and circumstanced that the taxes therein were held not presently payable or where the interests of the legatees, or devisees are not ascertainable under the provisions of this act, and to compound such taxes upon such terms as may be deemed equitable and expedient and to grant discharges to said executors, administrators or trustees upon the payment of the taxes, provided for in such composition, *provided, however*, that no such composition shall be conclusive in favor of said executors, administrators or trustees as against the interests of such cestui que trust as may possess either present rights of enjoyment, or fixed, absolute or indefeasible rights of future enjoyment, or of such as would possess such rights in the event of the immediate termination of particular estates, unless they consent thereto either personally, when competent, or by guardian. Composition or settlement made or effected under the provisions of this section shall be executed in triplicate and one copy shall be filed in the office of the state auditor; one copy in the office of the judge of the county court in which the tax was paid; and one copy to be delivered to the executors, administrators or trustees, who shall be parties thereto. (L. 1907-8, p. 747.)

**S. 7735. Receipt.** Any person shall upon the payment of the sum of fifty cents, be entitled to a receipt from the county treasurer of any county, of the state auditor, or at his option to a copy of a receipt that may have been given by such treasurer or state auditor for the payment of any tax under this act, under the official seal of such treasurer or state auditor, which receipt shall designate upon what real property, if any, of which any decedent may have died seized, such tax shall have been paid, by whom, and whether in full of such tax. Such receipt may be recorded in the office of the register of deeds of the county in which such property is situate in a book to be kept by him for that purpose, which shall be labeled "transfer tax." (L. 1907-8, p. 748.)

**S. 7736. Money paid to state.** All taxes levied and collected under this act, less any expenses of collection, shall be paid into the treasury of the state, and one-half of same shall be used for the public schools of this state as other available state common school funds, and one-half shall be applicable to the expenses of the state government, and to such other purposes as the legislature may by law direct. (L. 1907-8, p. 748.)

**S. 7737. Construction.** The words "estate" and "property" as used in this act shall be taken to mean the real and personal property or interest therein of the testator, intestates, grantor, bargainor, vendor or donor passing or transferred to individual legatees, devisees, heirs, next of kin, grantees, donees, vendees, or successors, and shall include all personal property within or without the state. The word "transfer" as used in this act shall be taken to include the passing of property or any interest therein, in possession or enjoyment, present or future, by inheritance, descent, devise, succession, bequest, grant, deed, bargain, sale, gift or appointment, in the manner herein prescribed. The word "decendent" as used in this act shall include the testator, intestate, grantor, bargainor, vendor, or donor. The words "county treasurer" and "county attorney" as used in this act shall be taken to mean the treasurer and county attorney of the county of the county court having jurisdiction as provided in section 7723 of this act. (L. 1907-8, p. 748.)

## OREGON.

### In General.

Oregon enacted its inheritance tax in 1903, using the Illinois statute of 1895 as a model. It has since been substantially amended. Stock in an Oregon corporation owned by a non-resident is not taxed unless the certificate is physically within the state, but stock in any corporation owned by a non-resident is taxable if the certificate is kept within the state. A corporation is responsible if it transfers any taxable securities for a non-resident before the tax is paid. Every estate is required to file a complete inventory.

### List of Statutes.

1903.	Statutes of Oregon,	p. 49.
1905.	" " "	c. 178, 309.
1909.	" " "	p. 60, c. 15
1909.	" " "	p. 306, c. 211.

### Constitutional Limitations.

#### Oregon Constitution, 1857, a. 1.

S. 32. No tax or duty shall be imposed without the consent of the people or their representatives in the legislative assembly, and all taxation shall be equal and uniform.

The Oregon Constitution of 1857, a. 1, s. 32, has no counterpart except in the South Dakota Constitution, a. 6, c. 100, s. 17. *In re McKennan*, 25 South Dakota 369, 126 N. W. 611, 618.

#### Oregon Constitution, 1857, a. 9.

S. 1. The legislative assembly shall provide by law for a uniform and equal rate of assessment and taxation, and shall prescribe such regulations as shall secure a just valuation for taxation of all property, both real and personal, excepting such only for municipal, educational, literary, scientific, religious, or charitable purposes as may be specially exempted by law.

S. 3. No tax shall be levied, except in pursuance of law, and every law imposing a tax shall state distinctly the object of the same, to which only it shall be applied.

S. 4. No money shall be drawn from the treasury but in pursuance of appropriations made by law.

## STATUTES.

Oregon St. 1903, p. 49. Approved February 16, 1903.

AN ACT TO TAX GIFTS, LEGACIES, AND INHERITANCES, and to provide for the collection of the same

S. 1. **Subject to tax.** All property within the jurisdiction of this state, and any interest therein whether belonging to the inhabitants of this state or not, and whether tangible or intangible, which shall pass by will or by statuted of inheritance of this or any other state, or by deed, grant, bargain, sale, or gift made in contemplation of the death of the grantor, or bargainor, or intended to take effect in possession or enjoyment after the death of the grantor, bargainor or donor, to any person or persons, or to any body or bodies politic or corporate, in trust or otherwise, or by reason whereof any person, or body politic or corporate, shall become beneficially entitled, in possession or expectation, to any property or income thereof, shall be and is subject to a tax at the rate hereinafter, specified in section 2 of this act, to be paid to the treasurer of the state for the use of the state; and all heirs, legatees and devisees, administrators, executors, and trustees, and any such grantee under a conveyance, and any such donee under a gift, made during the grantor or donor's life, shall be respectively liable for any and all such tax, with interest thereon until the same shall have been paid, as hereinafter provided: *Provided, however*, that devises, bequests, legacies, and gifts to benevolent and charitable institutions incorporated within this state and actually engaged in this state in carrying out the objects and purposes for which so incorporated, shall be exempt from any taxation under the provisions of this act.

S. 2. **Rates of tax.** When such inheritance, devise, bequest, legacy, gift, or beneficial interest to any property or income therefrom shall pass to or for the use or benefit of any father, mother, husband, wife, child, brother, sister, wife or widow of a son, or the husband of a daughter, or any child or children adopted as such in conformity with the laws of the state of Oregon, or to any person to whom the decedent for not less than ten years prior to death stood in the acknowledged relation of a parent, or to any lineal descendant born in lawful wedlock, in every such case the tax shall be at the rate of one per centum upon the appraised value thereof received by each person: *Provided*, that any estate which may be valued at a less sum than \$10,000 shall not be subject to any such duty or tax, and the tax is to be levied in above cases only upon the excess of \$5,000 received by each person. When such inheritance, devise, bequest, legacy, gift, or the beneficial interests to any property or income therefrom shall pass to or for the use or benefit of any uncle, aunt, niece, nephew, or any lineal descendant of the same, in every such case the tax shall be at the rate of two per centum upon the appraised value thereof received by each person on the excess of \$2,000 so received by each person. In all other cases the tax shall be at the rate of three per centum upon the appraised value thereof received by each person, body politic or corporate on all amounts over \$500 and not exceeding \$10,000; four per centum on all amounts over \$10,000 and not exceeding \$20,000; five per centum on all amounts over \$20,000 and not exceeding \$50,000; six per centum on all amounts over \$50,000.

Ss. 3-42 provide for the assessment and collection of a tax.

Oregon St. 1905, c. 178, p. 309, approved February 21, 1905, amends Oregon St. 1903, s. 1, making its proviso read as follows:—

*Provided, however,* that devisees, bequests, legacies, and gifts to benevolent, charitable or educational institutions incorporated within this state and actually engaged in this state in carrying out the objects and purposes for which so incorporated, or to any person or persons to be held in trust for any such institution in lieu thereof, shall be exempt from any taxation under the provisions of this act.

Oregon St. 1909, c. 15, filed February 5, 1909, amends Oregon St. 1903, ss. 2 and 16.

Oregon St. 1909, c. 211, p. 306, provides a special exemption of inheritance tax from a certain estate of "The Reed Institute," filed February 23, 1909.

The Oregon statute had not received any construction by the courts of Oregon up to 1910. *In re McKennan*, 25 South Dakota 369, 126 N. W. 611, 616.

## THE PRESENT ACT.

Oregon St. 1905, c. 178, p. 309.

TO TAX GIFTS, LEGACIES, AND INHERITANCES, and to provide for the collection of the same.

### Subject to Tax.

S. 1. All property within the jurisdiction of the state, and any interest therein, whether belonging to the inhabitants of this state or not, and whether tangible or intangible, which shall pass by will or by statutes of inheritance of this or any other state, or by deed, grant, bargain, sale, or gift, made in contemplation of the death of the grantor, or bargainor, or intended to take effect in possession or enjoyment after the death of the grantor, bargainor, or donor, to any person or persons, or to any body or bodies, politic or corporate, in trust or otherwise, or by reason whereof any person, or body politic or corporate, shall become beneficially entitled, in possession or expectation, to any property or income thereof, shall be and is subject to a tax at the rate hereinafter specified in section 2 of this act, to be paid to the treasurer of the state for the use of the state; and all heirs, legatees, and devisees, administrators, executors, and trustees, and any such grantee under a conveyance, and any such donee under a gift, made during the grantor or donor's life, shall be respectively liable for any and all such taxes, with interest thereon, until the same shall have been paid, as hereinafter provided; *provided, however,* that devisees, bequests, legacies, and gifts to benevolent, charitable or educational institutions incorporated within this state, and actually engaged in this state in carrying out the objects and purposes for which so incorporated, or to any person or persons to be held in trust for any such institution in lieu thereof, shall be exempt from any taxation under the provisions of this act. [L. 1905, p. 309.]

### Rates of Tax.

S. 2. When such inheritance, devise, bequest, legacy, gift, or beneficial interest to any property or income therefrom shall pass to or for the use or benefit of

any grandfather, grandmother, father, mother, husband, wife, child, brother, sister, wife or widow of a son, or the husband of a daughter, or any child or children adopted as such in conformity with the laws of the state of Oregon, or to any person to whom the decedent for not less than ten years prior to death stood in the acknowledged relation of a parent, or to any lineal descendant born in lawful wedlock, and in every such case the tax shall be at the rate of one per centum on the appraised value thereof received by each person; *provided*, that in the above cases any estate which may be valued at a less sum than \$10,000 shall not be subject to any such duty or tax, and the tax is to be levied in the above cases only on the excess of \$5,000 received by each person.

When such inheritance, devise, bequest, legacy, gift, or the beneficial interest to any property or income therefrom shall pass to or for the use or benefit of any uncle, aunt, niece, nephew, or any lineal descendant of the same, in every such case the tax shall be at the rate of two per centum on the appraised value thereof received by each person; *provided*, that in the above cases any estate which may be valued at a less sum than \$5,000 shall not be subject to any such duty or tax and the tax is to be levied in the above cases only on the excess of \$2,000 received by each person. In all other cases the tax shall be at the rate of three per centum on the appraised value thereof received by each person, body politic or corporate, on the whole of all amounts received not exceeding \$10,000; four per centum on the whole of all amounts received over \$10,000, and not exceeding \$20,000; five per centum on the whole of all amounts received over \$20,000 and not exceeding \$50,000; six per centum on the whole of all amounts received over \$50,000; *provided*, that in the above cases any estate which may be valued at a less sum than \$500 shall not be subject to any such duty or tax, and the tax is to be levied in the above cases only when the amount received by a person, body politic or corporate amounts to \$500 or more. [L. 1909, p. 60.]

#### **Tax, When it Accrues and is Payable.**

S. 3. All taxes imposed by this act shall take effect at and accrue upon the death of the decedent, or donor, and shall be due and payable at the expiration of eight months from such death, except as otherwise provided in this act; *provided, however*, that taxes upon any devise, bequest, legacy, or gift, limited, conditioned, dependent, or determinable upon the happening of any contingency or future event, by reason of which the full and true value thereof can not be ascertained at or before the time when the taxes become due and payable as aforesaid, shall accrue and become due and payable when the person or corporation beneficially entitled thereto shall come into actual possession or enjoyment thereof.

#### **Payment, When Made.**

S. 4. Any administrator, executor, or trustee having in charge, or in trust, any property for distribution, embraced in or belonging to any inheritance, devise, bequest, legacy, or gift, subject to the tax thereon as imposed by this act, shall deduct the tax therefrom, and within thirty days thereafter he shall pay over the same to the state treasurer, as herein provided. If such property be not in money, he shall collect the tax on such inheritance, devise, bequest, legacy, or gift, upon the appraised value thereof from the person entitled thereto. He shall not deliver, or be compelled to deliver, any property embraced in any inheritance, devise, bequest, legacy, or gift, subject to tax under this act, to any person until he shall have collected the tax thereon.

**Tax, to whom Paid; Duplicate Receipts.**

S. 5. The tax imposed by this act upon inheritances, devises, bequests, or legacies, shall be payable to the state treasurer, and the treasurer shall give the executor, administrator, trustee, or person paying such tax, a receipt, as provided by paragraph 4, section 2410, Bellinger and Cotton's Annotated Codes and Statutes of Oregon, whereupon it shall be a proper voucher in the settlement of his accounts. No executor, administrator, or trustee shall be entitled to a final account ng of an estate in the settlement of which a tax may become due under the provisions of this act, unless he shall produce a receipt so sealed and countersigned, or a copy thereof, certified by the said treasurer, or unless a bond shall have been filed, as prescribed by section 13 of this act. All taxes paid into the state treasury under the provisions of this act shall belong to and be a part of the inheritance tax fund of the state; *provided*, whenever the amount of money in this fund exceeds \$10,000, then all moneys in excess of \$5,000 shall be transferred to the general fund.

**Tax a Lien.**

S. 6. Every tax imposed by this act shall be a lien upon the property embraced in any inheritance, devise, bequest, legacy, or gift, until paid, and the person to whom such property is transferred, and the administrators, executors, and trustees of every estate embracing such property shall be personally liable for such tax until its payment, to the extent of the value of such property; *and provided*, *further*, that all inheritance taxes shall be sued for within five years after they are due and legally demandable, otherwise they shall be conclusively presumed to be paid and cease to be a lien as against the estate, or any part thereof, of the decedent.

**Discount, Interest, and Penalty.**

S. 7. If such tax is paid within eight months from the accruing thereof, a discount of five per centum shall be allowed and deducted therefrom. If such tax is not paid within eight months from the accruing thereof, interest shall be charged and collected thereon at the rate of eight per centum per annum from the time the tax is due and payable, unless by reason of claims upon the estate, necessary litigation, or other unavoidable delay, such tax can not be determined and paid as herein provided, in which case interest at the rate of six per centum per annum shall be charged upon such tax from the time from the accruing thereof, until the cause of such delay is removed, after which eight per centum shall be charged. In all cases when a bond shall be given, under the provisions of section 13 of this act, interest shall be charged at the rate of six per centum from the accrual of the tax until the date of the payment thereof.

**Power to Sell.**

S. 8. Every executor, administrator, or trustee shall have full power to sell so much of the property embraced in any inheritance, devise, bequest, or legacy, as will enable him to pay the tax imposed by this act, in the same manner as he might be entitled by law to do for the payment of the debts of a testator or intestate.



**Duty of Heir or Devisee when Legacy Payable out of Property; Legacy for Limited Period; Duty of Administrator.**

S. 9. If any bequest or legacy shall be charged upon or payable out of any property, the heir or devisee shall deduct such tax therefrom and pay such tax to the administrator, executor, or trustee, and the tax shall remain a lien or charge on such property until paid; and the payment thereof shall be enforced by the executor, administrator, or trustee in the same manner that payment of the bequest or legacy might be enforced; or by the prosecuting attorney under section 27 of this act. If any bequest or legacy shall be given in money for a limited period, the administrator, executor, or trustee shall retain the tax upon the whole amount; but, if it be not in money, he shall make application to the court having jurisdiction of an accounting by him to make an appointment [apportionment], if the case requires, of the sum to be paid into his hands by such legatee or beneficiary, and for such further order relative thereto as the case may require.

**Refund of Tax Erroneously Paid.**

S. 10. When any tax imposed by this act shall have been erroneously paid, wholly or in part, the person paying the same shall be entitled to a refund of the amount so erroneously paid, and the secretary of state shall, upon satisfactory proofs presented to him of the facts relating thereto, draw his warrant upon the state treasurer for the amount thereof in favor of the person entitled thereto, payable from the inheritance tax fund; *provided, however*, that all applications for such refunding of erroneous taxes shall be made within three years from the payment thereof.

**Tax When Foreign Executor Assigns Stock, etc.**

S. 11. If a foreign executor, administrator, or trustee shall assign or transfer any stock or obligations in this state standing in the name of the decedent, or in trust for a decedent, liable to any such tax, the tax shall be paid to the state treasurer on or before the transfer thereof, and no such assignment or transfer shall be valid unless such tax is paid.

**Depositories of Securities not to Deliver Same until Notice Given to State Treasurer; Penalty.**

S. 12. No safe deposit company, trust company, bank, corporation, or other institution, person or persons, holding securities or assets of a decedent, or corporation in which said decedent, at the time of his death, owned any stock, shall deliver or transfer the same to the executors, administrators, or legal representatives of said decedent, or upon their order or request, unless notice of the said time and place of such intended transfer be served upon the state treasurer in writing at least five days prior to the said transfer; and it shall be lawful for the said state treasurer, personally or by representative, to examine said securities prior to the time of such delivery or transfer. If upon such examination the state treasurer, or his said representative, shall, for any cause, deem it advisable that such securities or assets should not be immediately delivered or transferred, he may forthwith notify, in writing, such company, bank, institution, or person to defer delivery or transfer thereof for a period not to exceed ten days from the date of such notice, and thereupon it shall be the duty of the party notified to defer such delivery until the time stated in such notice, or until the revocation thereof

within such ten days; failure to serve the notice first above-mentioned or allow such examination, or to defer the delivery of such securities or assets for the time stated in the second of said notices, shall render said safe deposit company, trust company, corporation, bank, or other institution, person or persons, liable to the payment of the tax due on said securities or assets, pursuant to the provisions of this act.

#### **Deferred Payment; Bond.**

S. 13. Any person or corporation beneficially interested in any property chargeable with a tax under this act, and executors, administrators, and trustees thereof, may elect, within six months from the death of the decedent, not to pay such tax until the person or persons beneficially interested therein shall come into actual possession or enjoyment thereof. If it be personal property, the person or persons so electing shall give a bond to the state in the penalty of three times the amount of such tax, with such sureties as the county judge of the proper county may approve, conditioned for the payment of such tax and interest thereon, at such time and period as the person or persons beneficially interested therein may come into actual possession or enjoyment of such property, which bond shall be executed and filed, and a full return of such property upon oath made to the county court within six months from the date of transfer, thereof, as herein provided, and such bond must be renewed every five years.

#### **Taxes upon Devises and Bequests in Lieu of Commissions.**

S. 14. Whenever a decedent appoints one or more executors or trustees, and, in lieu of their allowance or commission, makes a bequest or devise of property to them, which would otherwise be liable to said tax, or appoints them his residuary legatees, and said bequests, devises, or residuary legacies exceed what would be a reasonable compensation for their services, such excess shall be liable to such tax, and the court having jurisdiction of their accounts, upon its own motion, or on the application of the state treasurer, shall fix such compensation.

#### **Jurisdiction of the County Court.**

S. 15. The county court of every county in this state having jurisdiction to grant letters testamentary or of administration upon the estate of a decedent whose property is chargeable with any tax under this act, or to give ancillary letters thereon, or to appoint a trustee of such estate, or any part thereof, shall have jurisdiction to hear and determine all questions arising under the provisions of this act, and to do any act in relation thereto authorized by law to be done by such court in other matters or proceedings coming within his jurisdiction; and if two or more county courts shall be entitled to exercise any such jurisdiction, the county court first acquiring jurisdiction hereunder shall retain the same to the exclusion of every other county court.

#### **Duty of County Judge; Notice to State Treasurer.**

S. 16. The judge of the county court having jurisdiction of the estate of any decedent shall, within ten days after the filing of a will or the application for letters of administration, or the granting of letters testamentary or of letters of administration, if in his opinion said estate is subject to a tax under any of the provisions of this act, cause the county clerk to send to the treasurer of the state a

certificate of the filing of such will or application, or the granting of such letters of administration. The court shall thereupon, and as soon as practicable after the granting of any such letters, proceed to ascertain and determine the value of every inheritance, devise, bequest, or legacy embraced in or payable out of the estate in which such letters are granted, and the tax due thereon. The state treasurer shall have the same right to apply for letters of administration as that conferred by law upon creditors. [L. 1909, p. 61.]

#### **Duty of Executors, etc.; Filing Inventory and Appraisement.**

S. 17. It shall be the duty of the executor, administrator, or trustee of every estate, within one month from the date of his appointment, or, if a trustee, from the acceptance of this trust, or, if necessary, such further time as the county clerk or judge may allow, make an inventory, verified by his own oath, of all the real and personal property of the deceased which shall come to his possession or knowledge, any will or directions of the decedent to the contrary notwithstanding, and to cause the same to be appraised, as by law required, and filed with the clerk of the court having jurisdiction of said estate.

#### **Extension of Time to File Appraisement.**

S. 18. Whenever, by reason of the complicated nature of an estate, or by reason of the confused condition of the decedent's affairs, it is impracticable for the executor, administrator, trustee, or beneficiary of said estate to file with the clerk of the court a full, complete, and itemized inventory of the personal assets belonging to the estate within the time required by statute for filing inventories of estates of decedents, the court may, upon the application of such representative or parties in interest, extend the time for filing the appraisement for a period not to exceed three months beyond the time fixed by law, or such further time as may be necessary upon good cause shown.

#### **Duty of Administrator, etc., to Send Inventory and Appraisement to State Treasurer.**

S. 19. Every executor or administrator, or trustee of any estate subject to the tax herein provided, shall, at least ten days prior to the first appraisement thereof, as provided by law, notify the state treasurer in writing of the time and place of such appraisement, and shall file due proof of such notice with a copy thereof with the clerk of the court having jurisdiction of such estate or trust. Every executor, administrator, or trustee, within ten days after such appraisement, or appraisement of any beneficial interest or reappraisement thereof, and before payment and distribution to the legatees or any parties entitled to beneficiary interest therein, shall make and render to the said state treasurer a copy of the said inventory and appraisement, duly certified as such by the clerk of the court having jurisdiction of said estate, and shall also make and file with the said state treasurer a schedule, list, or statement, in duplicate, of the amount of such legacy or distributive share, together with the amount of tax which has accrued or will accrue thereon, verified by his oath or affirmation, to be administered and certified thereon by some magistrate or officer having lawful power to administer such oaths, in such form and manner as may be prescribed by the state treasurer, which schedule, list, or statement shall contain the name of each and every person entitled to any beneficiary interest therein, together with the clear

value of such interest, as found and determined by the court having jurisdiction of said estate. One of said schedules shall be kept and retained by the state treasurer, and the other delivered by him to the secretary of state.

#### **Court May Act on First Inventory.**

S. 20. In ascertaining and determining the value of any inheritance, devise, bequest, or legacy embraced in or payable out of any estate or trust, and the tax due thereon, the court may act upon the inventory and appraisement of such estate as prepared and filed by the executor, administrator, or trustee thereof, pursuant to law, or it may require an appraisement or reappraisement as herein provided, of the true and full value of the property embraced in any inheritance, devise, bequest, or legacy, subject to the payment of any tax imposed by this act.

#### **Appointment of Appraisers.**

S. 21. The county court may, in any matter mentioned in sections 16, 17, and 18, or if no inventory or appraisement has been made, or if it deem it for any cause insufficient or inadequate, either upon its own motion or upon the application of any interested party, including the state treasurer, and as often and when occasion required, appoint one or more persons as appraisers to appraise the true and full value of the property embraced in any inheritance, devise, bequest, or legacy subject to the payment of any tax imposed by this act.

#### **Immediate Appraisal, when.**

S. 22. Every inheritance, devise, bequest, legacy, or gift, upon which a tax is imposed under this title, shall be appraised at its full and true value immediately upon the death of the decedent, or as soon thereafter as may be practicable; *provided, however*, that when such devise, bequest, legacy, or gift shall be of such a nature that its full and true value can not be ascertained at such time, it shall be appraised in like manner at the time when such value first becomes ascertainable. The value of every future or contingent or limited estate, income, interest, or annuity dependent upon any life or lives in being shall be determined by the rules or standard of mortality, and of value commonly used by actuaries' combined experience tables, except that the rates of interest on computing the present value of all future and contingent interest or estates shall be four per centum per annum interest.

#### **County Court to Fix Time and Place of Appraisement, and Clerk to Give Notice to Witnesses.**

S. 23. The county court shall by order fix the time and place when the appraisers appointed under the provisions of section 20 of this act shall make said appraisement. The county clerk shall forthwith give notice to the state treasurer, and to all persons known to have a claim or interest in the property, inheritance, devise, bequest, legacy, or gift to be appraised, and to such persons as the probate court may by order direct, of the time and place when said appraisers will make such appraisal. Such notice shall be given by mail. They shall, at such time and place, appraise the same at its full and true value, as herein prescribed, and for that purpose the said appraisers are authorized to issue subpoenas and to compel the attendance of witnesses before them, and to take evidence of such witnesses under oath concerning such property and the value

thereof, and they shall make report thereof, and of such value in writing to the said county court, together with the testimony of the witnesses examined, and such other facts in relation thereto, and to the said matter as said county court may order or require. Every appraiser shall be entitled to compensation at the rate of \$3 per day for each day actually and necessarily employed in such appraisal, and his actual and necessary traveling expenses, and such witnesses, and the officer or person serving any such subpoena, shall be entitled to the same fees as those allowed witnesses or sheriffs for similar services in courts of record. The compensation and fees claimed by any person for services performed under this act shall be approved by the county judge, who shall certify the amount thereof, as so approved, to the secretary of state, who shall examine the same, and, if found correct, he shall draw his warrant upon the state treasurer for the amount thereof in favor of the person entitled thereto, payable from the inheritance tax fund.

#### **Report of Appraisers to be Filed with County Court.**

S. 24. The report of the appraisers shall be filed with the county court and from such report, and other proof relating to any such estate before the county court, the court shall forthwith, as of course, determine the full and true value of all such estates and the amount of the tax to which the same are liable; or the county court may so determine the full and true value of all such estates, and the amount of tax to which the same are liable, without appointing appraisers, as herein provided.

#### **County Court to Give Notice; When.**

S. 25. The county court shall immediately give notice upon the determination of the value of any inheritance, devise, bequest, legacy, or gift, which is taxable under this act and of the tax to which it is liable, to all parties known to be interested therein, including the secretary of state and the state treasurer. Such notices shall be given by mail.

#### **Reappraisement; When.**

S. 26. Within thirty days after the assessment and determination by the county court of any tax imposed by this act, the state treasurer, or any person interested therein, may file with the said court objections thereto in writing, and praying for a reassessment and redetermination of such tax. Upon any objection being so filed, the county court shall appoint a time for the hearing thereof, and cause notice of such hearing to be given by mail to the state treasurer, and all parties interested, at least ten days before the hearing thereof; at the time appointed in such notice, the court shall proceed to hear such objection, and any evidence which may be offered in support thereof or opposition thereto; and if, after such hearing, the said court finds the amount at which the property is appraised is its market value, and the appraisement was made fairly and in good faith, it shall approve such appraisement; but if it finds that the appraisement was made at a greater or less sum than the market value of the property, or that the same was not made fairly or in good faith, it shall, by order, set aside the appraisement and determine such value. The state treasurer, or any one interested in the property appraised may appeal to the circuit court from the judgment order and decree of the county court in the premises, and may appeal to

the supreme court from the order, judgment, or decree of the circuit court in the same manner as is provided by law for appeals from judgments and orders of the county court and circuit court. All evidence heard on such reappraisement shall be reduced to writing and filed with the clerk of the court. All appeals taken from the judgment or decree of the court shall be had and tried on appeal in the same manner and with like effect as appeals in suits in equity are now heard and tried.

#### **Tax Due and Unpaid; Duty of Treasurer.**

S. 27. If the state treasurer shall have reason to believe that any tax is due and unpaid under this act, after the refusal or neglect of the persons liable therefor to pay the same, he shall notify the prosecuting attorney of the county in writing of such failure or neglect, and such prosecuting attorney, if he have probable cause to believe that such tax is due and unpaid, shall apply to the county court for a citation citing the persons liable to pay such tax to appear before the court on the day specified, not more than thirty days from the date of such citation, unless the court, for good cause shown, grants a longer time, and show cause why the tax should not be paid. The county court, upon such application, and whenever it shall appear to him that any such tax accruing under this act has not been paid as required by law, shall issue such citation, and a service of such citation, and the time, manner, and proof thereof, and the hearing and determination thereon, shall conform as near as may be to the provisions of the probate practice; *provided*, that where no provision is made for manner of such service or proof of same, the court or judge, at the time such order or citation is issued, shall direct the manner of giving notice and proof of the same; and whenever it shall appear that any such tax is due and payable and the payment thereof cannot be enforced under the provisions of this act in said county court, the person or corporation from whom the same is due is hereby made liable to the state for the amount of such tax, and it shall be the duty of the prosecuting attorney of the proper county to sue for, in the name of the state, and enforce the collection of such tax; and all taxes so collected shall be forthwith paid into the inheritance tax fund of the state. It shall be the duty of said prosecuting attorney to appear for and represent the state treasurer on the hearing of such citation, or of any other hearing. Whenever the county judge shall certify that there was probable cause for issuing a citation and taking the proceeding specified in this section, the state treasurer shall file with the secretary of state a duly verified itemized account of all expenses incurred for the service of the citation, and other lawful disbursements not otherwise paid, and the secretary of state shall thereupon draw his warrant upon the state treasurer for the payment thereof, and in favor of said treasurer, payable from the inheritance tax fund.

#### **Secretary of State to Furnish Books and Forms of Reports; Entries by Courts.**

S. 28. The secretary of state shall furnish to each county court a book, which shall be a public record, and in which shall be entered by the judge or clerk of said court, under the direction of said judge, the name of every decedent upon whose estate an application has been made for the issue of letters of administration or letters testamentary, or ancillary letters; the date and place of death of such decedent; the estimated value of the property of such decedent; names and

places of residence and relationship to decedent of the heirs at law of such decedent; the names and places of residence of the legatees, devisees, and other beneficiaries in any will of such decedent; the amount of each legacy, and the estimated value of any property devised therein, and to whom devised. These entries shall be made from data contained in the papers filed on any such application, or in any proceeding relating to the estate of the deceased. The county judge, or the clerk of the court under his direction, shall also enter in such book the amount of the property of any such decedent, as shown by the inventory thereof, when made and filed in his office, and the returns made by any appraisers appointed by him under this act, and the value of all inheritances, devises, bequests, legacies, and gifts inherited from such decedent, or given by such decedent in his will, or otherwise, as fixed by the probate court; and the tax assessed thereon, and the amounts of any receipts for payment thereof filed in said court. The secretary of state shall also furnish to each county court forms for the reports to be made by such county judge, which shall correspond with the entry to be made in such book. He shall also furnish, for the use of the courts and appraisers throughout the state, tables showing the average expectancy of life, and the value of annuities of life and term estates, and the present worth or value of remainders and reversions, as prescribed in section 20 of this act. The taxable value of life or term, deferred or future estates, shall be computed at the rate of four per cent per annum interest.

#### **Reports by County Judges and Custodian of Deeds and Records.**

S. 29. Each county judge shall on the first day of January, April, July, and October of each year, under the seal of the court, make a report, in duplicate, upon the forms furnished by the secretary of state, containing all the data and matters required to be entered in such book, one of which shall be immediately transmitted to the state treasurer, and the other to the secretary of state. The county clerk, or recorder of conveyances, of each county having custody of records of deeds, shall, at the same time, make reports, in duplicate, containing a statement of any conveyance filed or recorded in his office of any property which appears to have been made or intended to take effect in possession or enjoyment after the death of the grantor or vendor, with the name and place of residence of the vendor and vendee, and a description of the property transferred, as shown by such instrument, one of which duplicates shall be immediately transmitted to the state treasurer, and the other to the secretary of state.

#### **Duplicate Receipts to be Furnished by the State Treasurer.**

S. 30. It shall be the duty of the state treasurer, upon the payment of the sum of twenty-five cents, to issue to any person demanding the same, a copy of a receipt that may have been given by such treasurer for the payment of any tax under this act, which receipt shall designate upon what real property, if any, of which any decedent may have died seized, such tax shall have been paid, by whom paid, and whether in full of such tax. Such receipts may be recorded in the office of the officers having control and charge of the deed records of the county in which such property is situated, in a book to be kept by him for that purpose, which shall be labeled "transfer tax."

**Recording Receipts by County Officer.**

S. 31. The county commissioners of each county shall provide a book for the recording of said receipts. The officer of each county having control and charge of the deed records of each county shall charge and collect, at the time said receipt is presented for record, for the use of the county, the sum of twenty-five cents for recording each receipt. The sum paid to the state treasurer for copies of receipts shall be paid by him into the inheritance tax fund.

**Compromise of Amount of Tax Due.**

S. 32. Whenever an estate charged, or sought to be charged with the inheritance tax, is of such a nature or is so disposed that the liability of the estate is doubtful, or the value thereof cannot with reasonable certainty be ascertained under the provisions of law, the state treasurer may, with the written approval of the attorney general, which approval shall set forth the reasons therefor, compromise with the beneficiaries or representatives of such estates, and compound the tax thereon; but said settlement must be approved by the county court having jurisdiction of the estate, and after such approval the payment of the amount of the taxes so agreed upon shall discharge the lien against the property of the estate.

**Administrators, etc., to Furnish Additional Reports, When.**

S. 33. Administrators, executors, or trustees of the estates subject to the inheritance tax shall, when demanded by the state treasurer, send to such treasurer certified copies of such parts of their reports as may be demanded by him, and, upon refusal of said parties to comply with the treasurer's demand, it is the duty of the clerk of the court to comply with such demand, and the expense of making such copies and transcripts shall be charged against the estate, as are other costs in probate.

**Appeals.**

S. 34. Appeals may be taken to the circuit court from all final orders, judgments, and decrees, entered under the provisions of this act, in the same manner and with the same effect as other appeals are taken from final orders and judgments made or rendered by the county court. All such appeals shall be had and tried in the same manner and with like effect as appeals in suits in equity are now heard and tried.

**Penalty for Secreting or Willful Failure to Produce Will.**

S. 35. Any person who shall willfully sequester or secrete any last will or testament of a person then deceased, or who, having the custody of any such will and testament, shall willfully fail or neglect to produce and deliver the same to the judge of the county court having jurisdiction of its probate, or to any executor named therein, within a reasonable time after the death of the testator thereof, with intention to injure or defraud any person interested therein, shall be punished by imprisonment in the county jail not more than one year or by fine not exceeding \$500.



**Penalty for Administering Personal Estate without Proving Will.**

S. 36. Every person who shall administer the personal estate of any person dying after the passage of this act, or any part thereof, without proving the will of the deceased or taking out letters of administration of such personal estate within six calendar months after the death of the person so dying, shall be punished by imprisonment in the county jail not more than one year or by a fine not exceeding \$500.

**Duty of Administrators, etc., to Notify State Treasurer of Trust Estate, When.**

S. 37. Whenever any of the real estate of which any decedent may die seized shall pass to any body politic or corporate, or to any person or persons, or in trust for them, or some of them, it shall be the duty of the executor, administrator, or trustee of such decedent to give information thereof in writing to the state treasurer within three months after they undertake the execution of their expected duties, or, if the fact be not known to them within that period, then within one month after the same shall have come to their knowledge.

**Property Outside of the State.**

S. 38. Except as to real property located outside of the state passing in fee from the decedent owner, the tax imposed under section 2 shall hereafter be assessed against and be collected from property of every kind, which, at the death of the decedent owner, is subject to, or thereafter, for the purpose of distribution, is brought into this state and becomes subject to the jurisdiction of the courts of this state for distributive purposes, or which was owned by any decedent domiciled within the state at the time of the death of such decedent, even though the property of said decedent so domiciled was situated outside of the state.

**Taxes on Foreign Estate where Part of Property is in State.**

S. 39. In case of any property belonging to a foreign estate, which estate in whole or in part is liable to pay an inheritance tax in this state, the said tax shall be assessed upon the market value of said property remaining after the payment of such debts and expenses as are chargeable to the property under the laws of this state. In the event that the executor, administrator, or trustee of such foreign estates files with the clerk of the court having ancillary jurisdiction, and with the state treasurer, duly certified statements exhibiting the true market value of the entire estate of the decedent owner, and the indebtedness for which the said estate has been adjudged liable, which statements shall be duly attested by the judge of the court having original jurisdiction, the beneficiaries of said estate shall then be entitled to have deducted such proportion of the said indebtedness of the decedent from the value of the property as the value of the property within this state bears to the value of the entire estate.

**Compensation of Officers.**

S. 40. Except as otherwise provided in this act, no officer shall receive any additional compensation to that now allowed him by law, by reason of any duties imposed upon him by the provisions of this act.

**Payment of Disbursements by State Treasurer.**

S. 41. The state treasurer shall file with the secretary of state a duly verified itemized account of all expenses incurred and disbursements made by him in examining or having examined any securities under section 12 of this act, or any other expense actually incurred by him in enforcing or carrying out the provisions of this act, and the secretary of state shall thereupon draw his warrant upon the state treasurer for the payment thereof and in favor of said treasurer, payable from the inheritance tax fund.

**Penalty for Appraisers Taking Fee or Reward.**

S. 42. Any appraiser appointed by this act who shall take any fee or reward from any executor, administrator, trustee, legatee, next of kin, or heir of any decedent, or from any other person liable to pay said tax or any portion thereof, shall be guilty of a misdemeanor, and upon conviction in any court having jurisdiction of misdemeanors, he shall be fined not less than \$250 nor more than \$500, and imprisoned not exceeding ninety days, and, in addition thereto, the county judge shall dismiss him from such service.

**Repeal.**

S. 43. All laws or parts of laws inconsistent herewith be and the same are hereby repealed.

## PENNSYLVANIA.

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### In General.

Pennsylvania, the first state to enact an inheritance tax law, is one of the few states that has shown sanity in legislation and interpretation. Direct inheritances and the personal property of non-residents are very properly let alone, and the law has been so construed as to avoid double taxation.

The original law was enacted in Pennsylvania in 1826 and, with very few changes, it is the law today. The law was codified in 1887 and slightly amended since. Collateral inheritances only are taxed. The rate is uniformly five per cent and the exemption is \$250. The inheritances not taxed are those to father, mother, husband, wife, child, inheritances between illegitimate child and its mother, the children of a former husband or wife, adopted children, step-child, lineal descendant and daughter-in-law. It has been held that inheritances to a grandparent, and a son's widow who has remarried, are taxable.

No attempt is made to tax stock in Pennsylvania corporations owned by a non-resident, and securities kept in the state by a non-resident are not subject to the tax. This has been an important factor in the great growth of the safe deposit business of the Philadelphia trust companies. There was a case where a non-resident had an agent in Pennsylvania with very broad powers to buy and sell securities, in which it was held that the securities held by the agent were taxable in Pennsylvania (*Lewis's Estate*, 203 Pa. St. 211). It was later pointed out that this case must rest on its own peculiar facts and does not affect the general Pennsylvania doctrine that securities of a non-resident, though physically within the state, are not subject to the inheritance tax (*Shoenberger's Estate*, 221 Pa. St. 112). This does not apply to tangible personal property within the state (*Small's Appeal*, 151 Pa. St. 1).

It is refreshing to find the courts in at least one state insisting that if personal property of residents held outside of the state is

to be taxed on the theory that personal property follows the domicile of the owner, the logical consequence of the theory is that personal property of non-residents within the state is not taxable (*Cf. Coleman's Estate*, 159 Pa. St. 231).

A direct inheritance tax law passed in 1897, and imposing a uniform tax of two per cent on personal property only, was held unconstitutional (*Cope's Estate*, 191 Pa. 1). A bill for a direct inheritance tax introduced in the legislature of 1911 was defeated.

### List of Statutes.

1824-26.	Statutes of Pennsylvania,	c. 72, p. 227 (Apr. 7, 1826).
1829-30.	" "	No. 98, c. 157, s. 5 (Apr. 6, 1830).
1831-32.	" "	No. 80, par. 36.
1833-34.	" "	No. 52, pars. 62-69.
1834.	" "	p. 537, s. 648.
1834.	" "	c. 52 (Feb. 24, 1834), pars. 62, 66.
1841.	" "	c. 49, p. 99 (Mar. 22, 1841).
1844.	" "	c. 369, p. 564 (May 6, 1844).
1846.	" "	c. 268, p. 330 (Apr. 14, 1846).
1846.	" "	c. 300, p. 358 (Apr. 16, 1846).
1846.	" "	c. 388, p. 484, s. 4 (Apr. 22, 1846).
1846.	" "	c. 390, p. 486, s. 14 (Apr. 22, 1846).
1849.	" "	c. 369, ss. 10-16 (Apr. 10 1849).
1850.	" "	c. 7, p. 7 (Jan. 23, 1850).
1850.	" "	c. 147, p. 170 (Mar. 11, 1850).
1855.	" "	c. 47, p. 44.
1855.	" "	c. 450, p. 425 (May 4, 1855).
1874.	" "	c. 60.
1878.	" "	c. 227, pars. 8, 13.
1878.	" "	c. 236, p. 206 (June 12, 1878).
1887.	" "	c. 37, p. 79 (May 6, 1887).
1891.	" "	No. 50, p. 59.
1895.	" "	c. 243, p. 325 (June 26, 1895).
1897.	" "	No. 47, p. 56.
1901.	" "	c. 25, p. 59 (Mar. 25, 1901).
1903.	" "	c. 13, p. 12 (Mar. 5, 1903).
1905.	" "	c. 11, pp. 258 to 260.
1911.	" "	p. 112.
1700-1853.	Purdon's Digest,	p. 138, ss. 1-24.
1700-1861.	" "	p. 148, ss. 1-28.
1873-1878.	" Annual Digest,	p. 2096, s. 1.
1700-1872.	Brightley's Purdon's Digest,	p. 214, ss. 1-29.
1700-1883.	" "	p. 259, ss. 1-30.
1858-1887.	" "	(Supplement), ss. 1-25, p. 2148.
1893-1903.	" "	p. 113, ss. 1-4.
1700-1894.	" "	p. 305, ss. 1-26.

### **Constitutional Limitations.**

#### **Pennsylvania Constitution, 1873, a. 9.**

S. 1. All taxes shall be uniform, upon the same class of subjects, within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws; but the general assembly may, by general laws, exempt from taxation public property used for public purposes, actual places of religious worship, places of burial not used or held for private or corporate profit, and institutions of purely public charity.

S. 2. All laws exempting property from taxation, other than the property above enumerated, shall be void.

#### **Individual Exemptions.**

Before the constitution of 1873 uniformity of taxation was not required by the constitution, and hence the legislature would have the power to impose and could exempt individuals from liability for the inheritance tax. *Commonwealth v. Henderson*, 172 Pa. St. 135.

#### **Uniformity.—Progressive Rate.**

"The language of section 1, as to what the rule of uniformity shall embrace, is as broad and comprehensive as it could possibly have been made. The words, 'all taxes,' must necessarily be construed to include property tax, inheritance tax, succession tax and all other kinds of tax, the subjects of which are susceptible of just and proper classification. By necessary implication, the first clause of that section recognizes the authority of the legislature to justly and fairly, but never arbitrarily, classify those subjects of taxation with the view of effecting relative equality of burdens. A pretended classification that is based solely on a difference in quantity of precisely the same kind of property is necessarily unjust, arbitrary and illegal. For example, a division of personal property into three classes with the view of imposing a different tax rate on each, — class 1 consisting of personal property exceeding in value the sum of one hundred thousand dollars (\$100,000); class 2 consisting of personal property exceeding in value twenty thousand dollars (\$20,000), and not exceeding one hundred thousand dollars (\$100,000), and class 3 consisting of personal property not exceeding in value twenty thousand dollars (\$20,000), — would be so manifestly arbitrary and illegal that no one would attempt to justify it.

"The next clause of section 1 expressly authorizes the legislature to exempt from taxation four specified classes or kinds of property.

This specific delegation of authority to exempt impliedly prohibits express exemption from taxation of any other property, but to place this matter beyond the reach of doubt, it is expressly ordained, in section 2, that 'all laws exempting property from taxation other than the property above enumerated shall be void.'

"These limitations on the power of the legislature mean something. They are plainly intended to secure, as far as possible, uniformity and relative equality of taxation, by prohibiting generally the exemption of a certain part of any recognized class of property, and subjecting the residue to a tax that should be borne uniformly by the entire class, and by guarding against any other device that necessarily or intentionally infringes on the established rules of uniformity and relative equality which, as we have seen, underlie every just system of taxation. In any view that can reasonably be taken of these limitations, it must be manifest to any reflecting mind that the act in question (St. 1897, c. 47) offends against them by undertaking to wholly exempt from taxation the personal property of a very large percentage of decedents' estates, and impose increased and unequal burdens on the residue of the same class of property." *Per Sterrett, C. J., in In re Cope*, 191 Pa. St. 1, 21, 43 A. 79, 29 Pittsb. Leg. J. N. S. 379, 45 L. R. A. 316, 71 Am. St. Rep. 749, 44 Wkly. Notes Cas. 89. [It should be noted that this decision is based on the peculiar Pennsylvania doctrine, that an inheritance tax is a property tax, and it is not law elsewhere.—*Ed.*]

### History of Pennsylvania Act.

"The collateral inheritance tax was originally a legislative invention; was raised to five per cent at a period of great embarrassment in the financial history of the state; has contributed very essentially to the firm establishment of the public credit; and has been so long approved by the people, that it is not likely ever to be given up; but resting entirely upon statutory rules, it must be administered according to the very spirit and letter of the statutes." *Per Woodward, C. J., in Commonwealth v. Coleman*, 52 Pa. St. (2 P. F. Smith) 468.

### THE EARLY STATUTES.

Pa. St. 1826, c. 72, p. 227. Approved April 7, 1826.

S. 1. From and after the first day of May next, all estates, real, personal and mixed, of every kind whatsoever, passing from any person who may die seized or possessed of such estate, being within this commonwealth, either by will

or under the intestate laws thereof, or any part of such estate, or estates, or interest therein, transferred by deed, grant, bargain, or sale, made or intended to take effect, in possession or enjoyment after the death of the grantor, or bargainor to any person or persons, or to bodies politic or corporate, in trust or otherwise, other than to, or for the use of father, mother, husband, wife, children, and lineal descendants born in lawful wedlock, shall be, and they are hereby made subject to a tax or duty of two dollars and fifty cents on every hundred dollars of the clear value of such estate or estates, and at and after the same rate for any less amount, to be paid to the use of the commonwealth, and all executors and administrators, and their sureties shall only be discharged from liability for the amount of any and all such duties on estates, the settlement of which they may be charged with by having paid the same over for the use aforesaid, as herein directed; Provided, no estate which may be valued at a less sum than \$250, shall be subject to the duty or tax.

This is the first inheritance tax enacted in this country, apart from the early federal probate fees, and has subsisted with little change for nearly a century to the present time.

### **Remainders Included.**

The terms of the statute were comprehensive enough to include every interest which could pass whether in possession or remainder. *Commonwealth v. Smith*, 20 Pa. St. (8 Harris) 100.

### **Grandmother not Exempt.**

The only persons exempted are carefully enumerated and do not include a grandmother, who is therefore liable to pay the tax although the act is called a collateral inheritance law. *McDowell v. Addams*, 45 Pa. St. (9 Wright) 430.

### **Exemption Refers to Whole Estate.**

"No estate which may be valued at a less sum than \$250 shall be subject to the duty or tax." The court holds by reference to the language of the rest of the section that the word "estate" refers to the estate left by the decedent and does not mean the legacy or estate which passes by will or otherwise to the collateral heir or person taking the same. *Commonwealth v. Boyle*, 2 Del. Co. Rep. (Pa.) 335.

S. 2 provides for the duties of executors, administrators and registers.

S. 3 provides that the county commissioners shall take an account of real estate which may have passed from the persons dying seized thereof.

S. 4 provides that the tax shall be a lien until paid.

S. 5 provides for the oath of parties.

S. 6 requires the county treasurer to receive and pay over the tax.

**Commission of County Treasurers.**

Pa. St. 1829-30, c. 98, approved April 2, 1830, provides for the commission allowed county treasurers on inheritance taxes collected of five (5) per cent up to one thousand (\$1,000) dollars, and one (1) per cent above that; and in no case shall the commission on any one estate exceed one hundred (\$100) dollars.

**Probate Fee.**

Pa. St. 1829-30, c. 157, s. 5, approved April 6, 1830, provides a fee for probate and letters of administration of fifty (50) cents.

Pa. St. 1832, c. 80, pp. 36, 37, provides a very small probate and administration fee to be collected by the register of probate.

**Executors to Retain Tax. — Notice as to Real Estate.**

Pa. St. 1834, c. 52, ss. 62-66, approved February 24, 1834, provides that the executors or administrators shall retain in their hands the money for payment of the inheritance tax; and provides also for notice by them to the county commissioners of real estate subject to the tax.

**Payments to State Treasurer. — Commissions.**

Pa. St. 1834, p. 537, s. 648, provides for the payment of all sums exceeding five hundred (\$500) dollars by the county treasurers to the state treasurer; and provides that the commission allowed county treasurers in any one state shall not exceed one hundred (\$100) dollars.

**Collection. — Citation.**

Pa. St. 1841, c. 49, approved March 22, 1841, provides for a more convenient collection of the tax on collateral inheritances by authorizing a citation to executors or administrators failing to pay the tax; and by transferring, collecting and paying over the tax to the registers.

**Citation.**

**Pa. St. 1841, c. 49.** Approved March 22, 1841.

S. 1. That henceforward it shall be the duty of the registers for the probate of wills and granting letters of administration in the various counties of this commonwealth, whenever any executor or administrator of a decedent, whose estate is subject to the collateral inheritance tax, shall have neglected or omitted to file an account for the space of one year from the period now required by law, to issue a citation commanding the said executor or administrator to file and settle said account, the said citation to be served by the sheriff of the county, for which service he is to receive the same compensation now allowed by law for similar service.

**The official bond of the register of wills does not bind him to turn over collateral inheritance taxes collected, as under the statute of 1841, c. 49, imposing collection of the inheritance taxes on the register, the legislature did not rely on his general official**



bond as a security for the performance of this new duty, but required a special bond for this purpose. *Commonwealth v. Toms*, 45 Pa. St. (9 Wright) 408.

#### **Receipts.**

Pa. St. 1844, c. 369, p. 564, s. 3, approved May 6, 1844, provides that on payment of the inheritance tax duplicate receipts shall be given, one of which is to be sent to the auditor general to charge the register with the amount received.

#### **Special Refund.**

Pa. St. 1846, c. 268, p. 330, provides for a special refunding of a certain overpayment made by the administrator of \$18.43.

#### **Appraisal.**

Pa. St. 1846, c. 300, p. 358, passed April 16, 1846, makes it the duty of the local assessors to appraise property liable to the collateral inheritance tax.

#### **Accounts of Registers.**

Pa. St. 1846, c. 388, p. 483, passed April 22, 1846, provides for the publication of the accounts of the registers for the collateral inheritance tax.

#### **Rate Made Five Per Cent.**

**Pa. St. 1846, c. 390.** Approved April 22, 1846.

S. 14. That all estates, real, personal and mixed, of any kind whatsoever, subject to collateral inheritance tax, by the provisions of the first section of the act of the seventh of April, one thousand eight hundred and twenty-six, entitled, "An act relating to collateral inheritances," passing from any person who may die seized or possessed of such estate after the first day of May next, shall thereafter be made subject to a tax or duty for the use of the commonwealth, of \$5 on each and every hundred dollars of the clear value of such estate or estates, and at the same rate for any less sum, to be assessed and collected, as now provided by law.

#### **Not Retroactive.**

The Pennsylvania act of April 22, 1846, applied only to estates of persons dying after May 1, 1846. *Commonwealth v. Smith*, 20 Pa. St. (8 Harris) 100.

#### **Application of Revenues.**

Pa. St. 1849, c. 369, ratified April 10, 1849, s. 1, provides that the revenues accruing under the act shall be applied for the purchase of the state debt.

**The object** of the Pennsylvania statute of 1849 was only to give a mode of making the appraisement and fix the penalty for default. *Appeal of James*, 2 Del. Co. Rep. (Pa.) 164.

**Administrative Features Strengthened.**

S. 10 provides that the inheritance tax shall be paid on transfer of the stock and that any corporation permitting a transfer without payment of the tax shall be liable for the tax.

**Wife or Widow of a Son Exempted.**

S. 11 added to the exemptions the wife or widow of a son of the decedent.

**Appraisal.**

S. 12 provides for the valuation of such property subject to the collateral inheritance tax giving a right of appeal from the appraisal to the register's court.

**Appraisal in which County.**

Under this section appraisers must be appointed by the register of the county in which letters testamentary are issued; and in that county all of the proceedings should be had to enforce the payment of the tax assessed and so real estate in another county may be assessed under these proceedings. *Stinger v. Commonwealth* (2d), 26 Pa. St. (2 Casey) 429, 431.

**Appraisal Does Not Determine Liability.**

An appraisal under this section has for its object simply to ascertain the value of the estate and not to determine whether the estate is subject to the tax. Where the estate is not subject to be assessed with the tax the entire proceeding is a nullity, for it is only upon estates "that are or shall be subject to the payment of a collateral inheritance tax" that the register has any power for the purposes of assessment. Therefore the appraisal, although not appealed from, is not final on the question of the liability to tax. *Stinger v. Commonwealth*, 26 Pa. St. (2 Casey) 422, 426.

**Increase in Value after Death of Testator not Included.**

The value should be reckoned as of the death of the testator, not including later increase at the death of the life tenant. *Cowen v. Smith*, 20 Pa. St. (8 Harris) 100.

**Appeal.**

The administrator can appeal from the appraisement of the real estate only and the heirs only have a right of appeal from the appraisal of the real estate. *Cowen v. Coleman*, 52 Pa. St. 468.

**Payment of Tax on Remainder.**

S. 13 provides after the deduction of the life estate the tax on remainder shall be paid to the register of wills.

**Interest.**

S. 14 requires interest at twelve (12) per cent unless the tax is paid within nine (9) months from the passage of the act.

**Interest where Estate Involved in Litigation.**

It was the duty of the executors to estimate the amount of personal estate involved in litigation difficulties which could not be settled and pay the collateral inheritance tax on the balance. For failure to do so they are chargeable with interest at the rate of twelve per cent per annum from a year after the death of the testator. *Appeal of Commonwealth*, 34 Pa. St. (10 Casey) 204.

**Retroactive.**

The testator died in 1833, and this statute which provided that twelve per cent interest, to be counted from the death of the decedent, should be charged on all taxes due from the estates of persons then dead more than one year, unless the tax was paid within nine months of the passage of the act, applies to the estate in question. The legislature had a right to demand payment of the tax due to the commonwealth within a limited time, and it prescribed a penalty for neglect or refusal to comply. *Commonwealth v. Smith*, 20 Pa. St. (8 Harris) 100.

**Duties of Register.**

S. 15 authorizes the register of wills to issue citations or give notice by publication to executors for the collection of the tax and provides that he shall keep returns of the taxes collected.

The words "proper prothonotary's office" in this section refer to the office in the county where assessment and appraisal is made, and where the register granting letters testamentary and of administration has jurisdiction. *Stinger v. Commonwealth* (2d), 26 Pa. St. (2 Casey) 429, 431.

Pa. St. 1850, c. 7, approved January 23, 1850, extends the time for the payment of the inheritance tax.

**Remainder Interests.**

**Pa. St. 1850, c. 147.** Approved March 11, 1850.

S. 1. That in all cases where there has been, or shall be a devise, descent or bequest to collateral relatives or strangers liable to the collateral inheritance tax, to take effect in possession, or to come into actual enjoyment after the expiration of one or more life estates, or a period of years, it shall and may be lawful for the parties so circumstanced, liable for such tax, to elect to await their

coming into the actual possession of the estates or property subject to the said tax; and in such case shall give security to the register of the proper county for the payment thereof on the personal estate, at such period as they or their representatives may come into the possession, together with six per cent per annum interest on the amount of the tax from the time the same accrued until paid: Provided that such persons shall make a full return of such property within one year from the date thereof, or within one year of the death of the decedent, and within that period enter into such security to the satisfaction of the register; and the tax on real estate shall remain a lien on the real estate on which the same is chargeable until paid, bearing lawful interest as aforesaid; and no law heretofore passed shall be taken or construed to make any collateral inheritance tax a lien on any other property or estate than those chargeable with such collateral inheritance tax.

### **Retrospective.**

The Pennsylvania statute of 1826 was enlarged by the statute of March 11, 1850, which declared that "the words 'being within this commonwealth' shall be so construed as to relate to all persons who have been at the time of their decease, or now may be, domiciled within this commonwealth, as well as to estates: and this is declared to be the true intent and meaning of said act."

The court remarks that more pointed words to make the act retrospective could not have been chosen and that no clause of the constitution forbids the legislature to extend a tax already laid or to tax estates not taxed before. This act is plainly retrospective and applies to the estate of a person domiciled in Pennsylvania who died before the passage of the act. *In re Short*, 16 Pa. St. (4 Harris) 63.

The court affirms *Appeal of Short*, 16 Pa. St. 63, to the effect that the statute of 1850 is retrospective and prospective, and says that it applies to a decedent who was a resident of Pennsylvania only since 1860. *In re Lines*, 155 Pa. St. 378, 380, 26 A. 728, 32 Wkly. Notes Cas. 376.

The testator died before the passage of the St. 1850, leaving his property to non-resident collateral relations, some of the property being within the state and some without the state. The supreme court holds that the retroactive effect of the St. 1850 does not render it an ex post facto law within the words of the federal constitution, which apply to criminal cases only. *Carpenter v. Pennsylvania*, 17 How. 456.

### **When Tax on Remainders Accrues. — Lien. — Limitations.**

This statute [of 1850] made important changes in the interests of remaindermen. The duration of the lien is no longer unlimited and

under the third section of the supplement all collateral inheritance taxes not sued for within twenty years after they accrue are presumed to have been paid. These statutes, however, do not change the time when the inheritance tax accrued, but leave that time as the death of the testator. *Appeal of Mellon*, 114 Pa. St. 564, 570, 8 A. 183. See *Appeal of James*, 2 Del. Co. Rep. (Pa.) 164.

The collateral inheritance tax under the statute of 1850 cannot be demanded until the time for enjoyment arrives. *In re Wharton* (1881), 14 Phila. (Pa.) 279.

### **Penalties. — Interest.**

This statute provided that taxes on remaindermen which were payable before the passage of the statute at the death of the decedent might be postponed until they come into actual possession and relieved them from the penalty, but not from the interest. The Penn. St. 1855, P. L. 425, also released specifically from the penalties. *Appeal of Commonwealth*, 127 Pa. St. 435, 438, 17 A. 1094.

### **Appraisal Final.**

Penn. St. 1849, c. 369, s. 12, as amended by Penn. St. 1850, c. 147, p. 170, requires the register to appoint an appraiser to appraise the estate, and any party has a right of appeal to the register's court. This assessment of the appraiser is final and it does not admit of opening to take any additions to the clear value of property once assessed. That property is vested in the heir or devisee and cannot be reassessed for the purpose either of increasing or diminishing the value assessed by the appraiser. *Commonwealth v. Freedley*, 21 Pa. St. (9 Harris) 33.

### **Special Exemption.**

Pa. St. 1855, c. 47, approved February 21, 1855, specially exempts a certain legacy to an orphan asylum from the payment of the inheritance tax.

### **Penalties.**

**Pa. St. 1855, c. 450. Approved May 4, 1855.**

S. 1. That the penalty of twelve and a half per cent per annum imposed for the non-payment of the collateral inheritance tax, shall not be carried back to a period antecedent to the time when there should by law have been a settlement of the estate, or such part thereof as such tax is chargeable upon; but where from claims made upon the estate, litigation, or other unavoidable cause of delay, the estate of any decedent or a part thereof cannot be settled up at the end of a year from his or her decease, six per cent per annum shall be charged upon the collateral

inheritance tax, from the end of such year until there be default as aforesaid, and paid with the tax: Provided, that where the estate real or person withheld in the manner aforesaid from the parties entitled thereto, subject to such tax, has not been, or shall not be productive to the extent of six per centum per annum, they shall not be compelled to pay a greater amount as interest to the commonwealth than they may have realized, or shall realize from such estate during the time the same has been or shall be withheld as aforesaid: And provided, further, that said penalty shall not be charged on any collateral tax on any legacy or demise, to come hereafter into actual possession and enjoyment after the expiration of a previous life estate, or term of years therein, until the same shall come into actual possession and enjoyment, whether by limitation or power of appointment; and if such legatees or devisees shall elect to pay said tax in anticipation of the same coming into actual possession and enjoyment, the same shall be received at the then valuation of the legacy or devise, deducting the value of the life estate or term of years.

S. 2 provides that the appraisers are to receive no fee from the executor.

S. 3 provides for returns by registers of wills.

The statute of 1855 postpones the penalty of double interest imposed by the act of April 10, 1849, until after the period provided by law for the settlement of the estate, which is one year from the date of the letters testamentary. *In re Banks*, 5 Pa. Co. Ct. 614.

Where the testator died in 1835, leaving a life estate and a vested remainder, the remainder was then liable to a collateral inheritance tax upon its clear value, after deducting all previous estates. After the acts of 1850 and 1855, the tax could not be collected by the state until the actual enjoyment of the estate, but it continued a lien and should now be appraised at its value in 1835, first deducting the value of the life estate. Interest at the rate of six per cent is chargeable upon the appraised value from 1835 to the vesting of the estate in possession, and must be paid by the persons now entitled to the estate. *Appeal of James*, 2 Del. Co. Rep. (Pa.) 164.

Where the testator died in 1837, and the life tenant died in 1875, the commonwealth could not compel payment of the tax until the death of the life tenant; and therefore the twenty years' limitation did not begin to run until the death of the life tenant. This twenty years' limitation is only in favor of purchasers. *Appeal of James*, 2 Del. Co. Rep. (Pa.) 164. See *Appeal of Commonwealth*, 127 Pa. St. 435, 438, 17 A. 1094.

### **Special Exemption.**

The Pennsylvania statute of 1873, Public Laws 290, was a special exemption to one Henderson from taxes on the estate of

his adoptive father. The court sustains this special exemption, as at the time when the statute was passed the Pennsylvania constitution did not require uniformity of taxation. *Commonwealth v. Henderson*, 172 Pa. St. 135.

**Duties of State Treasurer. — Sinking Fund.**

Pa. St. 1874, c. 60, approved May 9, 1874, provides for the duties of the state treasurer and the management of the sinking fund.

**Returns.**

Pa. St. 1876, c. 15, approved March 31, 1876, s. 9, provides for monthly returns of receipts for inheritance taxes.

**Fees of Registers.**

Pa. St. 1878, c. 227, s. 8, covers the fees of registers of wills.

**Repeal.**

Pa. St. 1878, c. 227, s. 13, repeals inconsistent acts.

**Refund.**

Pa. St. 1878, c. 236, approved June 12, 1878, authorizes the state treasurer to return amount of inheritance taxes paid under mistake.

## THE CODIFYING ACT OF 1887.

**Pa. St. 1887, c. 37.** Approved May 6, 1887.

S. 1. Be it enacted, etc., That all estates, real, personal and mixed, of every kind whatsoever, situated within this state, whether the person or persons dying seized thereof be domiciled within or out of this state, and all such estates situated in another state, territory, or country, when the person, or persons, dying seized thereof, shall have their domicile within this commonwealth, passing from any person, who may die seized or possessed of such estates, either by will, or under the intestate laws of this state, or any part of such estate, or estates, or interest therein, transferred by deed, grant, bargain or sale, made or intended to take effect, in possession or enjoyment after the death of the grantor or bargainor, to any person or persons, or to bodies corporate or politic, in trust or otherwise, other than to or for the use of father, mother, husband, wife, children and lineal descendants born in lawful wedlock, or the wife, or widow of the son of the person dying seized or possessed thereof, shall be and they are hereby made subject to a tax of five dollars on every hundred dollars of the clear value of such estate or estates, and at and after the same rate for any less amount, to be paid to the use of the commonwealth; and all owners of such estates, and all executors and administrators and their sureties, shall only be discharged from liability for the amount of such taxes or duties, the settlement of which they may be charged with, by having paid the same over for the use aforesaid, as hereinafter directed: Provided, That no estate which may be valued at a less sum than two hundred and fifty dollars shall be subject to the duty or tax.

[See notes to the present act, *post*, p. 1058.]

**Codifies Existing Law.**

The statute of 1887 is chiefly a compilation and re-enactment of all previous laws in force on the subject of inheritance tax. This statute simply provides for the better collection of the collateral inheritance tax. It does not subject any other or different estates to the tax as provided in the previous statute; if it did it would be unconstitutional. *Cooper v. Commonwealth*, 5 Pa. Co. Ct. 271.

The statute of 1887 is a mere codification of existing law and was not intended to introduce a new subject of taxation. *In re Del Busto*, 6 Pa. Co. Ct. 289; *In re Stanton* (Orph. Ct.), 3 Pa. Dist. 371, 34 Wkly. Notes Cas. 391. *Appeal of Commonwealth*, 127 Pa. St. 435, 441.

**Statutes Codified. — Changes in Existing Law.**

A comparison of these acts with the act of May 6, 1887, P. L. 79, will show that the latter is a re-enactment of them as follows:

Section 1.—Acts of April 7, 1826, s. 1; April 22, 1846, s. 14; April 10, 1849, ss. 11, 13; and March 11, 1850, s. 3.

Section 2.—Act of April 10, 1849, part of s. 13.

Section 3.—Acts of April 10, 1849, s. 13; March 11, 1850, s. 1; May 4, 1855, s. 1.

Section 4.—Acts of April 10, 1849, s. 14; May 4, 1855.

Section 5.—Acts of February 24, 1834, s. 62, etc.; April 7, 1826, s. 11.

Section 6.—Act of February 24, 1834, s. 63.

Section 7.—Act of February 24, 1834, part of s. 62.

Section 8.—Acts of February 24, 1834, s. 65; March 22, 1841; March 17, 1842.

Section 9.—Acts of March 22, 1841; and May 6, 1844.

Section 10.—Act of April 10, 1849, s. 10.

Section 11.—Act of February 24, 1834, s. 69.

Section 12.—Acts of April 10, 1849, s. 12; March 11, 1850.

Section 13.—Act of May 4, 1855, s. 2.

Section 14.—April 10, 1849; March 11, 1850, s. 4; May 4, 1855, s. 3.

Section 15.—Act of April 10, 1849, s. 15; March 22, 1841, ss. 1, 2.

Section 16.—Act of April 10, 1849, s. 16.

Section 17.—Act of March 22, 1841, s. 4.

Section 18.—Act of March 22, 1841.

Section 19.—Act of March 11, 1850, s. 4.

Section 20.—Act of February 24, 1834, s. 62; March 11, 1850, s. 1; May 4, 1855, s. 3.



"The changes are: in s. 3, providing that interest upon a tax shall not begin to run against persons entitled to estates in remainder until the right of possession accrues (see Mellon's Ap., 4 Am. 564); section 12, giving the right to appeal from the appraisement of the state appraiser to the orphans' court, instead of the register's court, with a further right of appeal to the supreme court; section 13, increasing the punishment for taking fees by appraisers; section 14, making the proceedings for collection of unpaid taxes take place in the orphans' court instead of the common pleas; section 19, requiring the register's returns to be on the first Mondays of April, July, October, and January, instead of the first days of March, June, September, and December; and section 20, reducing the period of lien to five years, instead of twenty years." *Per* Penrose, J., in *Del Busto*, 6 Pa. Co. Ct. 289.

Pa. St. 1887, c. 37, s. 2, provides for a tax on gifts to executors above a fair commission.

#### **Remainders.**

S. 3. In all cases where there has been or shall be a devise, descent or bequest to collateral relatives or strangers, liable to the collateral inheritance tax, to take effect in possession, or come into actual enjoyment after the expiration of one or more life estates, or a period of years, the tax on such estate shall not be payable nor interest begin to run thereon, until the person or persons liable for the same shall come into actual possession of such estate, by the termination of the estates for life or years, and the tax shall be assessed upon the value of the estate at the time the right of possession accrues to the owner as aforesaid: Provided, That the owner shall have the right to pay the tax at any time prior to his coming into possession, and, in such cases, the tax shall be assessed on the value of the estate at the time of the payment of the tax, after deducting the value of the life estate or estates for years: And provided further, That the tax on real estate shall remain a lien on the real estate on which the same is chargeable until paid. And the owner of any personal estate shall make a full return of the same to the register of wills of the proper county within one year from the death of the decedent, and within that time enter into security for the payment of the tax to the satisfaction of such register; and in case of failure so to do, the tax shall be immediately payable and collectible.

[See notes to the Act of 1850, *ante* p. 1049.]

#### **Discount. — Interest. — Penalties.**

S. 4. If the collateral inheritance tax shall be paid within three months after the death of the decedent, a discount of five per centum shall be made and allowed; and if the said tax is not paid at the end of one year from the death of the decedent, interest shall then be charged at the rate of twelve per centum per annum on such tax; but where from claims made upon the estate, litigation, or other unavoidable cause of delay, the estate of any decedent or a part thereof cannot be

settled up at the end of the year from his or her decease, six per centum per annum shall be charged upon the collateral inheritance tax, arising from the unsettled part thereof, from the end of such year until there be default; Provided, further, That where real or personal estate withheld by reason of litigation or other cause of delay in manner aforesaid from the parties entitled thereto, subject to said tax, has not been, or shall not be productive to the extent of six per centum per annum, they shall not be compelled to pay a greater amount as interest to the commonwealth than they may have realized, or shall realize from such estate during the time the same has been or shall be withheld as aforesaid.

Sec. 5 to 20 cover the assessment and collection of the tax.

### LATER AMENDMENTS.

#### **Compensation of Registers.**

Pa. St. 1891, c. 50, approved May 14, 1891, provides definitely for the compensation to the registers of wills for services in collecting the inheritance tax, amending Pa. St. 1887, c. 37, s. 16.

#### **Appraisers.**

Pa. St. 1895, c. 243, approved June 28, 1895, fixes the compensation of appraisers and provides for expert appraisers when necessary.

### THE INVALID ACT OF 1897.

Pa. St. 1897, c. 47, p. 56.

AN ACT TAXING GIFTS, LEGACIES AND INHERITANCES in certain cases and providing for the collection thereof.

S. 1. Be it enacted, etc., That from and after the passage of this act all personal property of whatsoever kind and nature which shall pass by will, or by the intestate laws of this state, from any person who may die seized or possessed of the same while a resident of this state, whether the person or persons dying seized thereof be domiciled within or out of the state, or if the decedent was not a resident of this state at the time of his death, such property, or any part thereof, within this state, or any interest therein or income therefrom, which shall be transferred by deed, grant, sale or gift made in contemplation of the death of the grantor, bargainor, donor or assignor, or intended to take effect in possession or enjoyment after such death, to any person or persons, or to bodies corporate or politic, in trust or otherwise, or by reason whereof any person or body politic or corporate shall become beneficially entitled, in possession or expectancy, to any property, or the income thereof, shall be and is hereby made subject to a tax of two dollars on every one hundred dollars of the clear value of such personal property, after deducting the debts of decedent and costs of administration, and at and after the same rate for any less amount, to be paid for the use of the commonwealth; and all heirs, legatees, devisees, administrators, executors and trustees shall only be discharged from liability for the amount of such taxes, the settlement of which they may be charged with, by paying the same for the use

aforesaid as hereinafter directed; Provided, That personal property to the amount of five thousand dollars shall be exempt from the payment of this tax in all estates: And provided further, That so much of the estates of persons heretofore deceased as has not been actually distributed and paid to persons entitled thereto prior to the passage of this act shall be liable to the tax imposed by this law, as well as the estates of persons who die hereafter.

[See notes to the Constitution of 1873, *ante*, p. 1042.]

### **Nature of Statute.**

This is an act imposing taxes on personal property and has none of the features of the intestate law or of an act regulating the disposition of property by will. *In re Cope*, 191 Pa. St. 1, 20, 43 A. 79, 29 Pittsb. Leg. J. N. S. 379, 45 L. R. A. 316, 71 Am. St. Rep. 749, 44 Wkly. Notes Cas. 89

### **Uniformity.**

This statute is unconstitutional as not being uniform and equal in operation, as it exempts from the tax property not exceeding five thousand dollars in value. *In re Cope*, 191 Pa. St. 1, 43 A. 79, 29 Pittsb. Leg. J. N. S. 379, 45 L. R. A. 316, 71 Am. St. Rep. 749, 44 Wkly. Notes Cas. 89.

(This decision is wholly without authority in other states, because it was based upon the Pennsylvania constitution's prohibition of exemptions, and upon the discredited theory that an inheritance tax is a tax on property.—*Ed.*)

Pa. St. 1897, c. 47, ss. 2-16, provide for the collection and payment of the tax.

### **Refunding.**

Pa. St. 1899, c. 15, approved March 22, 1899, provides for the refunding of the inheritance tax after payment where it appears that the tax was not due on account of lineal heirs being subsequently discovered.

### **Refund.**

Pa. St. 1901, c. 25, amends Pa. St. of June 12, 1878, which provided for a refund of taxes erroneously paid on application within two years by extending the time within which applications shall be made as follows: "except when the estate, upon which such tax shall have been so erroneously paid, shall have consisted in whole or in part of a partnership, or other interest of uncertain value, or shall have been involved in litigation, by reason whereof there shall have been an over-valuation of that portion of the estate on which the tax has been assessed and paid, which over-valuation could not have been ascertained within said period of two years; then, and in such case, the application for repayment may be made to the state treasurer within one year from the termination of such litigation, or ascertainment of such over-valuation, or if that period has already

expired at the time of the passage of this act, then within six months after the passage of this act, notwithstanding any limitation contained in any previous act of assembly.

#### **Illegitimates.**

Pa. St. 1901, c. 325, s. 2: The mother of an illegitimate child, her heirs and legal representatives, and said illegitimate child or children, its or their heirs and legal representatives, shall have capacity to take or inherit from or through each other personal estate, as next of kin, and real estate as heirs in fee simple, or otherwise, under the intestate laws of this commonwealth, in the same manner and to the same extent, subject to the distinction of half bloods, as if said child or children had been born in lawful wedlock.

This section has the effect of legitimating an illegitimate child as to its mother, and conferring upon such child every right and privilege enjoyed by a child born to wedded parents. Therefore an illegitimate child need not pay a collateral inheritance tax on the property he takes as devisee of his mother. The court quotes *Commonwealth v. Stump*, 53 Pa. St. 132, where the legitimating act was ineffective simply because it was passed after the death of the testator. *Commonwealth v. Mackey*, 222 Pa. St. 613, 72 A. 250.

#### **Care of Burial Lot.**

Pa. St. 1903, c. 13, approved March 5, 1903, to go into effect January 1, 1904, exempts from the inheritance tax bequests, and devises in trust for the purpose of applying the entire interest or income thereof, to the care and preservation of the family burial lot or lots of the donor in good order and repair perpetually.

#### **Children of Former Husband or Wife Exempted.**

Pa. St. 1905, c. 181, approved April 22, 1905, extends the exempt classes to include the "children of a former husband or wife."

#### **Adopted Children Exempted.**

Pa. St. 1911, c. 105. Approved May 5, 1911.

S. 1. Be it enacted, etc., That all estates, real, personal and mixed, of every kind whatsoever, situated within this state, whether the person or persons dying seized thereof be domiciled within or out of this state; and all such estates situated in another state, territory, or country, when the person or persons dying seized thereof shall have their domicile within this commonwealth; passing from any adopting parent, who may die seized or possessed of such estates, either by will or under the intestate laws of this state, or any part of such estate or estates, or interest therein, transferred by deed, grant, bargain, or sale, made or intended to take effect in possession or enjoyment after the death of the grantor or bargainor, to or for the use of any legally adopted child or any legally adopted children,—shall not be subject to the collateral inheritance tax of five dollars on every hundred dollars of the clear value of such estate or estates, to the use of the commonwealth.

## THE PRESENT ACT.

### Taxable Transfers.

Pa. St. 1887, c. 37.

S. 1. Be it enacted, etc., That all estates, real, personal and mixed, of every kind whatsoever, situated within this state, whether the person or persons dying seized thereof be domiciled within or out of this state, and all such estates situated in another state, territory or country, when the person, or persons, dying seized thereof, shall have their domicile within this commonwealth, passing from any person, who may die seized or possessed of such estates, either by will, or under the intestate laws of this state, or any part of such estate, or estates, or interest therein, transferred by deed, grant, bargain, or sale, made or intended to take effect, in possession or enjoyment after the death of the grantor, or bargainer to any person or persons, or to bodies corporate or politic, in trust or otherwise, other than to or for the use of father, mother, husband, wife, children and lineal descendants born in lawful wedlock, or the wife, or widow of the son of the person dying seized or possessed thereof, shall be and they are hereby made subject to a tax of five dollars on every hundred dollars of the clear value of such estate or estates, and at and after the same rate for any less amount, to be paid to the use of the commonwealth; and all owners of such estates, and all executors and administrators and their sureties, shall only be discharged from liability for the amount of such taxes or duties, the settlement of which they may be charged with, by having paid the same over for the use aforesaid, as hereinafter directed: Provided, That no estate which may be valued at a less sum than two hundred and fifty dollars shall be subject to the duty or tax.

This section has been amended or affected by the following statutes: St. 1901, c. 325, s. 2, *ante*, p. 1057, as to illegitimate children; St. 1903, c. 13, *ante*, p. 1057, exempting bequests for the care of the family burial lot; St. 1905, c. 181, *ante*, p. 1057, exempting the children of a former husband or wife; St. 1911, c. 105, *ante*, p. 1057, exempting estates passing to adopted children. See notes to the act of 1826, *ante*, p. 1044.

### Title.

The Pennsylvania statute of 1887, P. L. 79, is entitled, "An act to provide for the better collection of collateral inheritance taxes." The court does not pass on whether this is a sufficient title as to cover new taxes imposed by the statute, but intimates that it is not. *In re Bittinger*, 129 Pa. St. 338.

The act of 1887 simply provides for the better collection of taxes, and cannot change the estates liable. *Appeal of Commonwealth*, 127 Pa. St. 435, 441.

### Validity.

This five per cent tax is one of the conditions of administration, and to deny the right of the state to impose it is to deny

the right of the state to regulate the administration of decedents' goods. . . . The act operates on the residue of the estate after paying debts and charges, and theoretically, that residue is always a balance in money. The administration account always exhibits a balance in cash, not in specific goods, whether bonds or horses; and though an heir may take bonds or horses as cash, the account must show, and always does show, a cash balance. That is the fund taxed by this law, and not the bond or other chattels which may have produced the fund. *Strode v. Commonwealth*, 52 Pa. St. 181.

### **Nature of Tax.**

The collateral inheritance tax levied under this act is not a tax within the meaning of the statute exempting charities from taxation. It is not a tax upon specific property of a legatee after it is vested in possession, but is a charge or tax upon the right to have the property by way of succession. It is not a tax upon the property or money bequeathed, but a diminution of the amount that otherwise would pass under the will, and hence what the legatee really receives is not taxed at all. It is that which is left after the tax has been taken off. It is only imposed once, and that is before the legacy has reached the legatee, and before it has become his property. *In re Finnen*, 196 Pa. St. 72, 46 A. 269.

### **A Property Tax.**

The collateral inheritance tax imposed by the act of 1887 upon real estate is a tax upon the property itself, as appears clearly from the second proviso in the third section of the act. *In re Bittinger*, 129 Pa. St. 338, 345, 18 A. 132. (It should be noted that this decision, though still law in Pennsylvania, is opposed to the current of authority in this country. See *anie*, p. 4.)

### **As of Death of Testator.**

The Pennsylvania statute of 1887 imposes the tax upon the death of the testator and not as of the time when the legatees actually receive the property. *In re Lines*, 155 Pa. St. 378, 385, 26 A. 728; 32 Wkly. Notes Cas. 376.

Where the brother of the intestate died two weeks before the intestate who inherited property from the brother, the court holds that the law cast upon the intestate her share in the brother's estate at the moment of the brother's death, and it is wholly im-

material that the net amount is not yet fixed and could not be until the final settlement of the administration. In this case the brother was domiciled in the state of New York and the sister was domiciled in Pennsylvania, and the court holds that the sister's share in her brother's estate is subject to the collateral inheritance tax imposed by the laws of Pennsylvania. The tax here was imposed upon the property of a resident which was in her constructive possession and so remained until her death. *In re Milliken*, 206 Pa. St. 149, 55 A. 853.

### **What Law Governs.**

Where the testator died in 1828, leaving a life tenant who died in 1864, the whole estate passed in 1828, and the tax on the remainder interest is payable, at the rate under the statute in force in 1828, of two and one-half per cent, and not under the higher rate in force on the death of the life tenant. *Commonwealth v. Eckhart*, 53 Pa. St. (3 P. F. Smith) 102.

### **"ALL ESTATES, REAL, PERSONAL OR MIXED."**

#### **Conversion.**

Where a non-resident testator directed her executors to sell and convey real estate in Pennsylvania, and apply the proceeds toward the payment of certain legacies given to collaterals, this is converted into personal property and is not within the jurisdiction of Pennsylvania, and therefore not subject to the Pennsylvania collateral inheritance tax. *In re Coleman*, 159 Pa. St. 231, 232, 28 A. 137.

Where the testator domiciled in New York directed all his real estate to be sold, this rendered real estate personal property, or gave it a situs at the place of his domicile; and therefore the fund realized from it was not subject to an inheritance tax in Pennsylvania, although the testator appointed executors in Pennsylvania as to all of his estate not situated in New York. And the Pennsylvania executors improperly paid the collateral tax on the real estate situated in Pennsylvania. *In re Schoenberger*, 221 Pa. St. 112, 118, 70 A. 579, 19 L. R. A. (N. S.) 290; *In re Lamberton*, 40 Pa. Super. Ct. 548.

*The land of a Pennsylvania testator* lying in other states which he directed his executors to sell, and the proceeds from which he gave to persons and objects in this state, are converted by the direction to sell, as the fund being distributed here is subject to the

collateral inheritance tax under the rules stated in *Miller v. Commonwealth*, 111 Pa. St. 321. *In re Williamson*, 153 Pa. St. 508, 521, 26 A. 246, 32 Wkly. Notes Cas. 93. *In re Dalrymple*, 215 Pa. St. 367, 372, 64 A. 554. *Miller v. Commonwealth*, 111 Pa. St. 321, 2 A. 492. The court distinguishes *Appeal of Drayton*, 61 Pa. St. 172, as in that case there was a discretion to sell.

*Sale at Death of Life Tenant and Investment outside State.*

The will of a resident of Pennsylvania directed that real estate situated outside of Pennsylvania should be sold on the death of the wife, who was made life tenant, and the proceeds invested in mortgages in the state where the land lay. The court intimates that the fact that the sale was postponed till the death of the life tenant prevents the land from being regarded as personalty at the death of the testator, and therefore subject to the inheritance tax. But however this may be, the court finds that the direction to invest the proceeds out of the state prevents them from being brought within the state of Pennsylvania and there distributed; and that therefore the fund never came within the jurisdiction of Pennsylvania and so is not subject to an inheritance tax. *In re Hale*, 161 Pa. St. 181, 183, 28 A. 1071.

*Where the testator gives the executors only a discretion* to sell certain land, and the testator's scheme of distributing the estate did not necessarily require a sale of this land, which was to be held by the trustees for a certain period, and where the trustees could convey the lands to the beneficiaries and meet the requirements of the will, the lands were not converted into personal property so as to become subject to the collateral inheritance tax.

The argument that it was necessary to sell the lands to pay debts is not convincing where it did not appear that at the date of the will the decedent conceived such a necessity to exist. That the real estate in other states is not now of sufficient value to pay his debts is by no means conclusive that he did not regard it as sufficient for that purpose when he executed his will; and that therefore he intended that his Wisconsin lands should not be delivered to the beneficiaries as real estate. Besides, he owned several mining locations in Canada which he, like most men who invest in such property, regarded as of great value. *In re Dalrymple*, 215 Pa. St. 367, 374, 64 A. 554. *Drayton's Appeal*, 61 Pa. St. 172.



***Sale Postponed.***

*In re Hale*, 161 Pa. St. 181, is quoted as a direct authority for the proposition that where the conversion of real estate is postponed it does not become personal property for the purpose of taxation, so where the testator directs real estate to be sold twenty years after his death, there is no conversion when the tax accrued. *In re Handley*, 181 Pa. St. 339, 346, 37 A. 587 reversing judgment, 3 Lack. Leg. N. 9.

***Power to Sell if Necessary.***

Where the Pennsylvania testator gave his executors full power to sell real estate if necessary for any purpose of his estate, and it became necessary to sell to pay legacies, and sale was made, the real estate situated in other states should be charged with the collateral inheritance tax. The power to sell if necessary to make distribution became, under the manifest intent of the testator, a direction to sell. The pecuniary legacies are to be paid before the residue. The testator intended them to be paid in cash. He must therefore have foreseen the necessity for the sale of his real estate, where the pecuniary legacies aggregate very much more than the amount of the personal estate. *In re Vanuxem*, 212 Pa. St. 315, 61 A. 876, 1 L. R. A. N. S. 400.

***Lien of Tax.***

Where there is a conversion of land situated in Pennsylvania into personal property the lien of the tax should be transferred from the land to the fund which it produced. *In re Brown*, 5 Pa. Dist. R. 286.

*The English doctrine* of conversion as applied to the collateral inheritance tax on land is discussed in *In re Handley*, 181 Pa. St. 339, 37 A. 587, reversing judgment, 3 Lack. Leg. N. 9.

*The weight of authority* in this country seems to be against the Pennsylvania doctrine of conversion. See *ante*, p. 139. See also *Curtis Estate*, 142 N. Y. 219, 36 N. E. 887.

***United States Bonds.***

The Pennsylvania collateral inheritance tax is applicable to that part of the decedent's estate which consisted of bonds of the United States that are by federal law exempted from state taxation. "The mistake of the learned counsel for the plaintiff in error consists, we conceive, in treating this as a tax of the government bonds, when it is really a tax upon a decedent's estate, dying with-

out lineal heirs. And it does not help the argument that the bulk of the estate is made up of these bonds; for that estate passed into the hands of the executor for administration, and is taxed in his hands as an estate. The law takes every decedent's estate into custody, and administers it for the benefit of creditors, legatees, devisees and heirs, and delivers the residue that remains, after discharging all obligations, to the distributees entitled to receive it. One of the legal obligations to which every estate that is to go to collateral kindred is subject, is this five per cent duty to the commonwealth.

"And it is not until this work of administration is performed that the right of succession attaches. The distributees may, indeed, consent to accept certain goods and chattels in specie without conversion, as is frequently done in settlement of estates, but such arrangement in no case affects the theory of the law that the estate is first to be administered and then enjoyed.

"Now this five per cent tax is one of the conditions of administration, and to deny the right of the state to impose it is to deny the right of the state to regulate the administration of decedents' goods. If an estate consist wholly of federal bonds and is indebted, conversion of them into money is necessary to pay the debts, and nobody would doubt that the sum that remained after payment of debts would be subject to a deduction of five per cent for the use of the state. But suppose the federal bonds be used to pay the only indebtedness that exists, and a residue of estate remains for distributees, is it not to pay the collateral inheritance tax? Clearly it must, though it may be less than the aggregate of the bonds. The act operates on the residue of the estate after paying debts and charges, and, theoretically, that residue is always a balance in money. The administration-account always exhibits a balance in cash not in specific goods, whether bonds or horses; and though an heir may take bonds or horses as cash, the account must show and always does show a cash balance. That is the fund taxed by this law and not the bonds or other chattels which may have produced the fund. Therefore neither the prohibitory clause of the Act of Congress of 1862, nor any of the principles of decision against state authority to tax that which federal authority has exempted from taxation, have any application here. The federal government has not prohibited the states from prescribing rules of inheritance and succession to estates of decedents, and it would be a grievous mistake of legislative

and judicial authority to apply it with such effect." *Per* Woodward, C. J., in *Strode v. Commonwealth*, 52 Pa. St. 181 (2 P. F. Smith).

### **From What Fund Payable.**

The collateral inheritance tax is payable out of the legacy or devise unless the testator otherwise directs. *In re Thomson*, 12 Phila. (Pa.) 36. (1878.)

### **Direction in Will as to Payment of Tax.**

The direction in a will, "after deducting any and all necessary expenses to divide the said net income in equal shares among" certain persons, results in deducting the inheritance taxes from the gross income, after which the net income is to be divided in equal shares among the life tenants. Each legatee of income should pay the tax from his share unless otherwise expressly directed. *In re Brown*, 208 Pa. St. 161, 57 A. 360.

The provision in a will that the collateral inheritance tax shall be paid out of the residue, but not out of the pecuniary legacies, is not restricted to the legacies then given, but includes legacies given in a subsequent codicil. *In re Cummings*, 12 Pa. Co. Ct. 45.

The will directed that the income of the testator's estate for the first year after his death should be added to the principal, then both principal and interest applied indiscriminately to the payment of expenses, debts and legacies. The result is that the corpus of the estate has been preserved to the extent of the first year's income, upon which sum no collateral inheritance tax was paid. The court holds that the direction of the testator resulted in allowing so much more of the principal to pass to the collateral heirs and that therefore so much more is liable to the tax. *In re William*, 11 Pa. Co. Ct. 235.

### **Federal Inheritance Tax.**

Where the testator's will was drawn in 1895, and she died in 1900 and directed the "collateral inheritance tax" to be paid by the executor out of the corpus of the estate, this did not charge the estate with the federal inheritance tax of 1898. There was a clear disposition to charge the corpus of the estate with the collateral inheritance tax only, which was at that time the only legacy tax in existence. *In re Baker*, 21 Pa. Super. Ct. 536.

**Payment from Share not Charged with Tax.**

Where a collateral inheritance tax is improperly paid on land in Pennsylvania which the testator directed to be sold, the percentage of the tax cannot be deducted from the last legacy to be paid as such legacy's proportion of the collateral inheritance tax paid to the state, simply because the executors were appointed in Pennsylvania and the legatee came by counsel before the court and asked for payment in full, as happened in *In re Lewis*, 203 Pa. St. 211. The residuary legatees having permitted the tax to be paid, they cannot now ask that a portion of it be deducted from the legacy to their relief. They ought to have protected themselves at the proper time. *In re Schoenberger*, 221 Pa. St. 112, 114, 118, 70 A. 579, 19 L. R. A. (N. S.) 290.

Where the executor pays the tax upon the life interest out of the capital of the fund, the tax should be refunded to the executor out of the income of the life estate. This is so although the legacy was intended for the maintenance of the life tenant who had and has no other means of support; and although the tax was paid by the executor before he transferred the fund to the trustee. *In re Christian*, 2 Pa. Co. Ct. 91, 18 Wkly. Notes Cas. 88.

**"SITUATED WITHIN THIS STATE."****Interest of Non-resident in Pennsylvania Partnership.**

Where a partnership was composed of two residents of Pennsylvania and one of Maryland, and its property was largely situated in Pennsylvania, the interest of the Maryland partner who devised his share in the partnership to the other two partners is property within the state of Pennsylvania and subject to a collateral inheritance tax there. This interest was tangible personal property having an actual situs within the state receiving the benefit and protection of its laws during the testator's lifetime, and therefore subject to payment of the collateral inheritance tax. *In re Small*, 151 Pa. St. 1, 15, 25 A. 23, 30 Wkly. Notes Cas. 521, affirming 11 Pa. Co. Ct. 1.

Where the testator died domiciled in Cuba, leaving legacies of property in Cuba to residents of Pennsylvania, no inheritance tax in Pennsylvania can be collected. *In re Hood*, 21 Pa. St. (9 Harris) 106.

Pennsylvania statute of April 7, 1826, taxes not the person, but the estate within this commonwealth. The statute of April 22, 1846, increases the collateral inheritance tax to five per cent.

The statute is laid on the amount of the estate being within the commonwealth and the domicile has nothing to do with the question, so the tax should be collected where one domiciled in France bequeathed a legacy to a citizen of France out of personal property situated in Pennsylvania. *Commonwealth v. Smith*, 5 Pa. St. (5 Barr) 142.

### **Situs of Government Bonds.**

United States bonds are simply evidence of indebtedness and have the same situs as the domicile of the owner. So where the bonds were deposited with a safety deposit company they were, constructively at least, in the possession of the testator. Where the testator, a citizen of New Jersey, died having certain United States bonds on deposit with a Pennsylvania company, the bonds being due for redemption, there is no tax in Pennsylvania on the fund produced by the bonds. It is clear that estates not passing by will that is operative within the state or under the intestate laws thereof are not within the purview of the act. The act was never intended to apply to government bonds, but was intended only to embrace personal property of a tangible nature actually situated or used for business purposes within the commonwealth, and not to mere certificates of indebtedness whose situs necessarily follows the owner's domicile. *Appeal of Orcutt*, 97 Pa. St. 179, 186.

### **Resident's Personalty in Another State where he Owes Debts.**

The personal estate in another state of a Pennsylvania decedent is not subject to be taxed because his debts there exceeded its amount, and his real estate there was not subject to the tax because beyond the jurisdiction of Pennsylvania, in 1866. *Commonwealth v. Coleman*, 52 Pa. St. 468, 473.

### **Pennsylvania Personalty of Non-resident.**

Where the testator was not a resident of Pennsylvania and died in 1898, leaving property in Pennsylvania which had for a long while been in Pennsylvania in the hands of an agent for purposes of investment and reinvestment, this personal property is within the state of Pennsylvania, and where by agreement of the parties the property was distributed by an administrator appointed in Pennsylvania, the court holds that the Pennsylvania tax should be levied. *In re Lewis*, 203 Pa. St. 211, 214, 52 A. 205.

*In re Lewis*, 203 Pa. St. 211, was said not to be a convincing authority — one which was decided upon its own peculiar facts, and is not to be stretched and does not alter the Pennsylvania doctrine, that securities of a non-resident, though physically within the state are not subject to tax. *In re Schoenberger*, 221 Pa. St. 112, 119, 70 A. 579, 19 L. R. A. (N. S.) 290.

Where the intestate who lived in Oklahoma died immediately after his sister who lived in Pennsylvania, and no administration was taken out in Oklahoma, but administration was taken out in Pennsylvania where the only known creditor was, and where the fund was paid by the administrator of the sister directly to the administrator of the intestate in Pennsylvania, the fund was never out of the state, and had a situs in Pennsylvania and not at the domicile of the decedent, and is therefore subject to the Pennsylvania collateral inheritance tax. *In re Weaver* (Orph. Ct.), 4 Pa. Dist. R. 260.

### **Intangible Property in Pennsylvania of a Non-resident.**

Intangible property has no situs other than the owner's domicile, and hence bonds cannot be taxed in Pennsylvania simply because they were kept there by a non-resident owner. *In re Orcutt*, 97 Pa. St. 179.

The choses in action of non-residents consisting of stocks and bonds of Pennsylvania corporations, and cash awarded on the settlement of the account of the administrators of the decedent's deceased husband, are not subject to tax under the statute of 1887. The court speaks of the practical difficulty of enforcing the tax, as it could not be known in the jurisdiction of the ancillary administration whether the estate would be solvent or not. *In re Del Busto*, 6 Pa. Co. Ct. 289.

Under the Pennsylvania statute of 1826, as construed by the act of 1850, the choses in action of a decedent not domiciled at his death in Pennsylvania passing to collateral heirs or legatees are not subject to tax simply because they are rights in action against the state or its corporations or against the inhabitants of the state. *Kintzing v. Hutchinson*, Fed. Cas. 7834.

The executors of the will of a citizen of New Jersey sued a Philadelphia savings bank to recover the amount of the deposit of the deceased, and the only defence was that the money was subject to the collateral inheritance tax under the Pennsylvania statute.

The court holds that this statute has no application to the choses in action belonging to one domiciled in another state at the

time of his death, though his representatives may have to come here to reduce them to possession.

The court further holds that the result would be the same if the law were otherwise, as the state and not the savings bank is the proper party to set up this defence. *Allen v. Philadelphia Sav. Fund Soc.* 14 Phila. 408, Fed. Cas. No. 234. As to the first point, the court cites and follows *Kintsing v. Hutchinson*, Fed. Cas. No. 7834.

Securities of a non-resident actually situated in Pennsylvania at his death were taxed in *In re Alexander* (1845), 3 Clark 87 (4 Pa. L. J.). *Commonwealth v. Smith*, 5 Pa. St. 142.

### **Real Estate outside State.**

While it is conceded that the powers of the state for taxing purposes are very great, they are necessarily limited to either property or persons within her borders, and the state cannot impose a tax on real estate situated in Maryland and charge it with a lien for such unpaid taxes, although the devisor and the devisee are both citizens of Pennsylvania.

All property of the citizen within the state may be taxed, and all such property outside the state as is drawn to or follows in law the domicile or person of the owner, such as bonds and mortgages, etc., no matter where situated. But real estate is not drawn to the person or domicile of the owner for taxation or any other purpose, and hence cannot be taxed outside of the jurisdiction where it is situated. The taxation of property involves the reciprocal duty of protection on the part of the state levying such tax. *In re Bittinger*, 129 Pa. St. 338, 345. To the same effect see *Commonwealth v. Coleman*, 52 Pa. St. 468.

### **"PERSONS DYING SEISED THEREOF."**

The collateral inheritance tax is assessed only on property which was the absolute property of the testator and not on that of which she only held the power of appointment. *In re Lisle*, 22 Pa. Super. Ct. 262 (1903).

Where the testator sells a promissory note of doubtful value on condition the buyer will pay him interest as long as the testator lives, this is not subject to the inheritance tax. *In re Garman*, 3 Pa. Co. Ct. 550.

The state must show not only that the persons against whom it claims are not of the exempted class, but that the estate out of which the tax is alleged to be payable passed to those persons

from one who died seized or possessed of the same. Under the Pennsylvania act actual seisin and actual possession is necessary and a person cannot be seized of an estate which is limited to take effect only after his death. *In re Swann*, 12 Pa. Co. Ct. 135.

### **Beneficiary Societies' Payments.**

The decedent died in 1885, being at his death a member of two beneficial societies. Provision was made for the payment of sums of money on the death of the decedent to his widow and children, and the court holds that this money never formed part of his estate and is therefore not subject to the inheritance tax. The court holds that this scheme which is intended to benefit the family of a person cannot be construed as a conspiracy to evade the law relating to the collateral inheritance tax, although money was to be paid on the death of the contributor. *In re Vogel*, 1 Pa. Co. Ct. 352, 18 Wkly. Notes Cas. 242.

### **Income after Death.**

Where the income of testator's estate for the first year after his death was by the direction of his will added to the principal, and both principal and income applied indiscriminately and without distinction to the payment of expenses, debts and legacies, this does not subject the income for the first year to the collateral inheritance tax. This tax fastens upon so much of the estate as passes to collaterals as it stands at the death of the testator. Income accruing subsequently comes not from the testator but from the property held by or for the use of the legatee. *In re Williamson*, 153 Pa. St. 508, 521, 26 A. 246, 32 Wkly. Notes Cas. 93.

### **Property Invested in Name of Another.**

Where a large part of the estate in Iowa is invested in the name of a nephew of the testator, the court holds that this money is taxable under the law of Pennsylvania in accordance with *In re Williamson*, 153 Pa. St. 508, 26 A. 246, 32 Wkly. Notes Cas. 93. *In re Miller*, 182 Pa. St. 157, 162, 37 A. 1000.

### **Domiciled.**

The court upholds a finding as to domicile in Pittsfield, where it appears that it was the only place where the testator ever voted or paid a personal tax, and that he continued to return there to his home with a friend to the very time of his death, and died there,



that he declared that to be his home and made it a point to return there and vote at the presidential elections when his business interests would permit. *In re Dalrymple*, 215 Pa. St. 367, 371, 64 A. 554.

*Where the grantor, after making a deed in trust to assign the property in accordance with her will, moved from Pennsylvania, where the trustee resided, to New York, where she died, the court holds that the change in the domicile of the grantor did not affect the right of the state to collect the tax: that the statute grasped the estate when one citizen created the trust with the features described and made this the domicile or situs of the estate. As the grantor could not take the property out of its jurisdiction by any act of hers, so she could not make it follow her or affect it with any incidents of the new domicile when she removed.* *Commonwealth v. Kuhn*, 2 Pa. Co. Ct. 248.

### Double Taxation.

The fact that the state of New York, where the testator was domiciled, had already levied an inheritance tax, did not prevent the state of Pennsylvania from laying a tax on the same property where it was in Pennsylvania in the hands of agents there for investment and reinvestment, and where it was distributed by the Pennsylvania court. *In re Lewis*, 203 Pa. St. 211, 217, 52 A. 205.

### "OTHER THAN TO OR FOR THE USE OF."

*A gift by a testator to a creditor with interest falls neither within the letter or spirit of the collateral inheritance act. What is paid to the creditor forms no part of the "clear value" of the estate of the debtor, nor can it be said to pass to him under the will.* *In re Quin* (1880), 13 Phila. (Pa.) 340.

*Where an estate is given to a widow on condition she pay legacies to collateral relatives, the gift to the collateral relatives is direct and is subject to the inheritance tax.* *Appeal of Lauman*, 131 Pa. St. 346, 351, 18 A. 900.

*Exempting stepchildren from the collateral inheritance tax together with other lineal descendants is not void as improper classification. The court remarks that it has nothing to do with the wisdom of legislation.* *Commonwealth v. Randall*, 225 Pa. St. 197, 73 A. 1109.

### Dower.

The court holds that where a widow elects to take against her husband's will, and subsequently accepts less than she is entitled

to by statute, this fact cannot affect the inheritance tax which is computed upon the property which vested in her by descent, and the tax should therefore be computed upon the amount to which she was entitled. *In re Small*, 11 Pa. Co. Ct. 1.

Where the widow released her claim under the intestate law and the property was given directly to the legatees, it was all subject to the tax. The entire interest specifically bequeathed to the legatees was received and for all that appears is still held by them. *In re Small*, 151 Pa. St. 1, 16, 25 A. 23, 30 Wkly. Notes Cas. 521.

### **Dower Right Exercised.**

When a widow refused the provisions of the will for her and exercised her dower right and took property bequeathed to the collateral heirs, the collateral inheritance tax does not apply to this sum. The court will not regard the money paid her as a payment out of the fund passed by will to the beneficiaries under it. The fact that the widow took less than the law allowed her makes no difference, as she still took her dower rights. The court must look at the true character of the transaction and in doing so cannot permit it to be submerged in mere form. *Appeal of Commonwealth*, 34 Pa. St. (10 Casey) 204.

### **Sums Paid in Compromise.**

Where the legatees, who are all collateral relatives of the testator, made a compromise with a son whereby they paid him a certain sum in settlement, and in consideration thereof he withdrew his contest and the will was admitted to probate, the collateral legatees are not liable to pay the collateral inheritance tax on money paid to the son. The reason is that the amount paid the son "was never received by them as legatees, and under the act it is only so much of the estate which actually passes to them by virtue of the will that is liable to the tax." *In re Pepper*, 159 Pa. St. 508, 28 A. 353, reversing 4 Pa. Dist. R. 101.

The same result as *In re Pepper*, 159 Pa. St. 508, 28 A. 353, was reached where a settlement was made by a devisee with contestants claiming title adversely to the decedent as this property thus surrendered never formed a part of the devisee's estate and was not liable as such to the collateral inheritance tax. The allowance or compromise of the claims of third persons simply reduces the estate afterwards passing to volunteers with the same effect as if the reduction had been caused by the payment of debts

or as if the payment or surrender had been the result of a suit terminating in favor of the claimant. *In re Kerr*, 159 Pa. St. 512, 513, 28 A. 354, 2 Pa. Dist. R. 535.

Where legatees claim that the writing was a valid will and the provision for their benefit was in discharge of an obligation and the heirs denied the validity of the writing as a will, because of the want of testamentary capacity, and a settlement was made in which the employes were treated as creditors and allowed a part of their demands, this was clearly a compromise of a doubtful right to avoid litigation, by which the heirs parted with a portion of the estate for the purchase of peace. The employes took nothing under the will, and the money paid them was not subject to tax unless the whole arrangement was collusive.

The claim of the commonwealth was not affected by the fact that the annuities provided for the sisters of the decedent were secured to them without abatement. The contest was as to the whole writing and not as to a part. If it was invalid, their claims as annuitants fail with the others.

The will was refused probate, and the money paid to the legatees was not subject to the collateral tax. So payments made to other legatees who had no demand against the estate were also relieved from the tax. *In re Hawley*, 214 Pa. St. 525, 63 A. 1021.

Where a compromise of the validity of the will was made under which the will was disallowed, and the balance, after paying certain legacies, given to the contestant, the court holds that this balance was a part of the decedent's estate and subject to tax.

The court suggests that if an absolute sum had been fixed as the price of the consent of the contestant to the compromise she might perhaps claim the amount as a debt from the other parties in interest. *In re Rubincam* (1881), 14 Phila. (Pa.) 306.

*Where a will gives collateral relatives a life interest which they had already bought and paid for*, there is no inheritance tax. It seemed that the provisions were due to the anxiety of the testator that his sisters should not be disturbed in the occupancy of the home he granted to them. *In re Morris* (Orph. Ct.), 1 Pa. Dist. R. 818 (1891).

### Care of Burial Lots.

A legacy in trust, the interest of which is to be devoted to the care of two cemetery lots, is subject to the inheritance tax. Under the statute of 1887 all bequests are subject to the tax unless they fall within some of the classes explicitly exempted.

It was contended that this bequest was to be considered as in the nature of funeral expenses, but the manifest intention of the testator was to provide a fund the income of which should be devoted to caring for the last resting place of all her relatives, and that this involved caring for her grave was a mere incident of the general purpose. *In re Long*, 22 Pa. Super. Ct. 370. (Bequests for the care of burial lots are now exempt under St. 1903, c. 13.)

### **Advancements Subject to Tax.**

Long prior to the death of the testator, he advanced to the beneficiaries, on account of their legacy at different times, sums which aggregated four thousand dollars and took from them their bonds in corresponding amounts conditioned for the payment during his life of an annuity or yearly sum equal to the interest at six per cent on the advancements. The court holds that this was really a device to evade the tax and its meaning; that the testator should receive a life income from his legacy, and that full enjoyment of the principal should be had by the legatee only after the testator's death. *In re Conwell*, 5 Pa. Co. Ct. 368, 22 Wkly. Notes Cas. 183.

### **Effect of Release by Legatee.**

The intestate died leaving as his only heirs his widow and one sister. Sixteen months later the sister released all her interest to the widow. But the court holds that this did not relieve the property from the collateral inheritance tax, as the title was vested in the sister immediately on the death of the intestate. *In re Frank*, 9 Pa. Co. Ct. 662.

### **"Widow of the Son."**

A former wife of a son who has married again is not a "widow" within the terms of the statute, and therefore the collateral inheritance tax must be assessed on such widow. *Commonwealth v. Powell*, 51 Pa. St. (1 P. F. Smith) 438.

### **"CHILDREN AND LINEAL DESCENDENTS BORN IN LAWFUL WEDLOCK."**

### **Special Adoption Statutes.**

Pennsylvania statute, May 4, 1855, gave an adopted son the right to inherit, but did not change the collateral inheritance tax law;

and as regards that law, he is not to be taken as a son in fact, but he is a collateral relative. *Commonwealth v. Nancrede*, 32 Pa. St. (8 Casey) 389.

Where a special act provided for the adoption of a certain illegitimate child investing her with all the rights of a legitimate daughter and heir, this does not bind the commonwealth and make her any the less subject to the collateral inheritance tax. The court follows *Commonwealth v. Nancrede*, 32 Pa. St. 8 Casey (Pa.) 389. *In re Wayne*, 2 Pa. Co. Ct. 93, 18 Wkly. Notes Cas. 10.

An act of the legislature, declaring an illegitimate son to be the lawful heir and adopted son of his father, is an act of adoption and not of legitimation, and does not exempt the estate passing from the father to such adopted son from the collateral inheritance tax. *In re Prinvince* (Orph. Ct.), 4 Pa. Dist. R. 591.

A statute giving one "the rights, powers and privileges" of a son clearly exempted him from the payment of a collateral inheritance tax, especially where the statute further expressly provides that the adopted son shall be subject only to such tax as would be payable if he were the son of the adopting father.

The court distinguishes this case from *Commonwealth v. Nancrede*, 32 Pa. St. 389, where the mere fact of adoption was said not to make the adopted son a son in fact, as in this case there was a necessary implication of exemption, and therefore the son took the estate exempt from the payment of a collateral inheritance tax. *Commonwealth v. Henderson*, 172 Pa. St. 135, 33 A. 368, 37 Wkly. Notes Cas. 344.

Where a statute was passed decreeing that a certain child should be capable of inheriting as if born in lawful wedlock, and was not related to the adopting parents, his estate was subject to a collateral inheritance tax. *Tharp v. Commonwealth*, 58 Pa. St. (8 P. F. Smith) 500, following *Commonwealth v. Nancrede*, 32 Pa. St. (8 Casey) 389. *Commonwealth v. Stump* (53 Pa. St. 132, 3 P. F. Smith,) is only a dictum.

Where a statute was passed authorizing one to adopt his illegitimate child to make him his heir, the court holds that this is simply an act of adoption and not an act of legitimation. "That a legacy given to an adopted child who stands in the place of an heir would be subject to this tax is too plain for argument. The reason is that he is not a lineal descendent born in lawful wedlock. He has not the blood." *Per curiam*, in *Commonwealth v. Ferguson*, 137 Pa. St. 595, 601, 20 A. 870, 10 L. R. A. 240 n.

**Illegitimates.**

Where the intestate died, leaving only collateral relatives and an illegitimate son who was legitimized by the legislature after the death of the intestate, the estate descended and vested in the collateral heirs, and the state was entitled to collect the tax. The moment a man dies leaving heirs, lineal or collateral, his estate vests and is beyond the constitutional power of the legislature. *Galbraith v. Commonwealth*, 14 Pa. St. (2 Harris) 258.

The court does not decide whether an estate descended to a bastard who has been legitimated by an act of assembly is subject to the collateral inheritance tax. *Commonwealth v. Ferguson*, 137 Pa. St. 595, 601, 20 A. 870, 10 L. R. A. 240 n.

The court holds, on a careful consideration of the statute of 1887 and of the whole subject, that children born prior to marriage who have been legitimated by the subsequent marriage of their parents are not liable to the tax. *Commonwealth v. Gilkerson*, 18 Pa. Super. Ct. 516.

Where a legacy is given to the husband of the daughter evidently as trustee for the use of his children, it is not liable to a collateral inheritance tax. *In re Morris* (Orph. Ct.), 1 Pa. Dist. R. 818.

**To Religious Society on Condition.**

An annuity to a church on condition that a bell be rung at certain specified times is subject to the inheritance tax. It was claimed that this is a legacy to be enjoyed only on a condition or for a consideration. But the court holds that this makes no difference. *Commonwealth v. Gilpin* (Com. Pl.), 3 Pa. Dist. R. 711, 14 Pa. Co. Ct. 122.

Where a will gave to the church two thousand dollars, and in consideration of the bequest the testator desired that it shall keep in order and perpetuity his family burial lot, the legacy is subject to the payment of the collateral inheritance tax. This obligation does not exempt the legacy. The fact that the legacy is not a pure gratuity is not material. The court follows *In re Seibert*, 18 Wkly. Notes Cas. 276. *In re Walter*, 3 Pa. Co. Ct. 447.

**Power. — Donees Classified as Relatives of Original Testator.**

Where property is left to a daughter of a testator for life with power of appointment on her death, and she appoints to her brothers and sisters, the state is not entitled to collect a collateral inheritance tax on her appointment, as the property has gone only to

lineal descendants of the original testator. *Commonwealth v. Williams*, 13 Pa. St. (1 Harris) 29.

Where a life tenant exercised the power of appointment in favor of those who are collateral relatives of the life tenant, but lineal descendants of the original testator, the collateral inheritance tax cannot be levied. Where, however, the power of appointment is exercised improperly, the estate passes as the estate of the donee to collaterals of the donee. *Commonwealth v. Sharpless*, 2 Chest. Co. Rep. (Pa.) 246.

### **Power under Will of Non-resident.**

Where a citizen of Maryland created a life estate with a power of appointment to a citizen of Pennsylvania, and the life tenant exercised the power by will, the state was not entitled to an inheritance tax upon the exercise of the power.

The fund was in Maryland at the testator's death, the interest made by it was received by the appointor to her own use during her lifetime and the appointee asks no more than to be permitted to receive the principal from the executors free from encumbrances or deduction as her successor. This is a plain case of a foreign legacy received abroad which is not taxable in Pennsylvania. *Commonwealth v. Duffield*, 12 Pa. St. (2 Jones) 277, *Brightly N. P.* 469.

### **How Tax on Annuity Paid.**

Where a residue estate was given in trust to pay an annuity the court holds that the intention was that the annuitant should receive a clear annual sum named in the annuity, and therefore the tax must fall upon the residue. *In re Bispham*, 6 Pa. Co. Ct. 459.

Where the will gives an annuity of three hundred (\$300) dollars to be paid out of the income or out of the principal, if necessary, the inheritance tax should not be assessed upon the whole sum as the bequest is contingent upon the legatee living long enough to exhaust it all. Therefore the tax is to be assessed only upon the annual payments as they fall due. *In re Crompton*, 10 Pa. Co. Ct. 443, 48 Leg. Int. 452, 29 Wkly. Notes Cas. 36.

Where the will provides that all bequests of "money" shall be paid without deduction for the inheritance tax, this included an annuity payable by a devisee out of the rents of the land.

Pa. St. 1887 c. 7, does not apply to this case, but this section simply provides a method of collection, and as the annuity is a bequest in money not subject to a deduction for the tax, the burden

falls on the residuary estate, even though the bequest were payable out of rents coming from a particular source. *In re Lea*, 194 Pa. St. 524, 45 A. 337. A direction in a will that an annuitant "is to receive not less than \$1,500 a year" is not of itself enough to show an intention to place the burden of the tax on the general estate and relieve the annuitant from the inheritance tax. *In re Holbrook*, 3 Pa. Co. Ct. 265, 20 Wkly. Notes Cas. 69.

### **Annuity Payable out of Future Profits of Land.**

Where a devise is made to a lineal descendant with the direction to her to pay two thousand dollars a year out of the rents and profits of the land devised, the words of the act of 1887 are sufficient to cover this bequest, although payable by the devisee of the land out of its future rent. *In re Lea*, 194 Pa. St. 524, 45 A. 337.

### **In Contemplation of Death.**

Where a decedent makes a deed in contemplation of death, his executors should be made to pay the tax. *Appeal of Wright*, 38 Pa. St. (2 Wright) 507.

Where the decedent made an absolute deed of land and took a bond back from the grantee to pay the income to the grantor for his life — this is a conveyance in contemplation of death within the terms of the Pennsylvania inheritance tax of 1826, especially where it was made during the last sickness of the grantor.

"It is true the obligation of the bond was not inserted as a condition or reservation in the deed; it was in form a mere personal obligation; but this contention does not involve a technical question of title nor of lien; the whole matter depends upon the single fact whether or not the transfer was made or intended to take effect in enjoyment at the death of the grantor. The policy of the law will not permit the owner of an estate to defeat the plain provisions of the collateral inheritance law by any devise which secures to him, for life, the income, profits and enjoyment thereof; it must be by such a conveyance as parts with the possession, the title and the enjoyment on the grantor's lifetime." *Per Clark, J.*, in *Reish v. Commonwealth*, 106 Pa. St. 521, 526.

A will devised land to James and John, two brothers, and provided that if James should not build on his land he might sell it to his brother John at two thousand dollars besides what he was to pay out of it. James sold to John his share for thirty-five hundred dollars, and John sold part of this for fifteen hundred



dollars. Later, at the request of John, James released him from all claims under his father's will on condition that John should convey all the land to James's children, they to take possession at John's death and give him an obligation for the two thousand dollars payable after his death.

John died unmarried and without issue, and it was held that the share of the land which had belonged to John originally is subject to the tax, but the portion of James is not subject to tax. Substantially it was agreed that the children of James should purchase back that share after John's death by refunding to his estate what he had paid their father for it. Their notes for two thousand dollars have gone into the inventory of the present estate, which is, of course, to pay the tax. Part of the consideration was that John should convey the entire estate to his nephews and nieces. But it cannot be said that this share was John's at the time of his death, or that it was within the spirit of the proviso in the will. It is not found or pretended that the object was to evade the tax and the note given for the transfer excludes such a pretension. Had James continued the owner under his father's will, it would have passed to the children on his death and there would have been no claim upon it by the state for the tax on the estate of John. *Appeal of Waugh*, 78 Pa. St. (28 P. F. Smith) 436.

Where the decedent had assigned stocks in trust to pay the decedent income for life, and after that certain sums in annuities to persons who might survive him, and reserved the right to revoke any of the trusts or grants, this was intended to take effect in possession after his death. It took effect neither in right nor possession until his death because none were to take who did not survive him, and because he might revoke the whole. *Appeal of Wright*, 38 Pa. St. (2 Wright) 507.

### **Trust Deeds.**

The testator made his will December 1, 1881, bequeathing his estate to certain collateral relatives and for religious and charitable purposes. August 14, 1882, he executed a deed, assigning all his property to trustees for their own use and benefit during his life, and at his death to hold the same for the uses and purposes of his will.

The court holds that the property is subject to a collateral inheritance tax as the deed was not to take effect in enjoyment until after the death of the testator. *Appeal of Seibert*, 110 Pa. St. 329, 1 A. 346.

Where the testator, a resident of Pennsylvania, conveyed to a New York trust company all his property in trust to collect the profits and pay them to the decedent during his life, and on his death to certain beneficiaries named, reserving in the decedent the power to alter the deed of trust at any time, the property is liable to the Pennsylvania collateral inheritance tax. The decedent was not only the beneficial owner of the securities, but under the reserve power of modification or revocation he had absolute control of the disposition to be made of the securities upon his decease. The court quotes with approval *Du Bois's Appeal*, 121 Pa. St. 386. *In re Line*, 155 Pa. St. 378, 393, 26 A. 728, 32 Wkly. Notes Cas. 376.

A deed by the decedent to another in trust to pay the income to the grantor for life and on his death to pay certain pecuniary bequests to persons mentioned is subject to the collateral inheritance tax. *In re Maris*, 14 Pa. Co. Ct. 171, 3 Pa. Dist. 33 (1893).

Where a non-resident executed a deed of trust to a Pennsylvania corporation, preserving to herself a life estate with remainder over, and the fund was kept in Pennsylvania, the court holds that the fund is liable to a tax following *In re Lewis*, 203 Pa. St. 211. *Singer v. Guarantee Trust & Safe Deposit Co.*, 24 Pa. Super. Ct. 270.

The testator conveyed property in trust to assign the property as the grantor might by last will appoint, and for want of such appointment, to her heirs, reserving no right of revocation in the deed. The deed was signed in 1857 in Pennsylvania and subsequently the grantor moved to New York where she lived until her death in 1885. The court holds that this is a deed intended to take effect after the death of the grantor within the meaning of the statute of 1826. *Commonwealth v. Kuhn*, 2 Pa. Co. Ct. 248.

### **Unrecorded Deed.**

Where the decedent conveyed a farm to his nephew for a good consideration and where the deed was never placed on record until after the grantor's death, the transfer is not subject to an inheritance tax in the absence of evidence of intent to convey. *In re McCormick*, 15 Pa. Co. Ct. 621, 3 Pa. Dist. 838, 25 Pittsb. Leg. Int. N. S. 91 (1894).

### **Delivery of Deed.**

Where the beneficial owner of land for whom another is holding the legal title as bailee directs the holder of the legal title to give the property to his son, and the holder of the title executes a deed, which he gives to his son, telling him to give it to the person named

by the beneficial owner when he calls for it — this is a good delivery of the deed, and the land cannot be held for an inheritance tax from the estate of the beneficial owner, especially where the grantee under the deed had entered on the land and made improvements on the property. *Stinger v. Commonwealth*, 26 Pa. St. (2 Casey) 422, 428.

### **Deed not Delivered.**

Where the testator had given a deed of the property in question to the sister, which deed the court finds never was delivered until after the death of the testator, the property remained the property of the testator and subject to the inheritance tax. *Appeal of Davenport* (Pa. 2, 1888), 14 A. 346.

### **Exemption of \$250 Applies to Whole Estate.**

The collateral inheritance act of May 6, 1887, provides that "no estate which may be valued at a less sum than \$250 shall be subject to tax." This exemption refers to the whole estate and not to distributive shares carved therefrom. *In re Mixer* (1891), 28 Wkly. Notes Cas. (Pa.) 182, 8 Lanc. L. Rev. 256; 10 Pa. Co. Ct. 409. [See notes to the act of 1826, *ante*, p. 1044.]

Where there were seven legacies of two hundred (\$200) dollars each to certain charitable institutions, the tax should be paid on each legacy, as the two hundred and fifty (\$250) dollars' limitation applies only where the net value of the estate to be distributed to collaterals does not exceed two hundred and fifty (\$250) dollars. The liability to a tax is to be determined not by the amount of the legacy, but by the clear value of the estate passing to persons or bodies corporate not exempt from taxation. *In re Howell*, 10 Pa. Co. Ct. 232.

### **Evasion.**

"No mere device intended to evade the payment of tax due the commonwealth can be effective. Courts look beyond the form of any arrangement by which the commonwealth is deprived of a tax to its substance to ascertain its real purpose. An agreement to set aside a will and to make distribution in accordance with its provisions will not relieve legacies passing to collaterals from tax. Such an agreement is evidently collusive. But money paid in good faith in compromise of threatened litigation is not subject to tax. *Pepper's Estate*, 159 Pa. St. 508; *Kerr's Estate*, 159 Pa. St. 512." *Per* Fell, J., in *In re Hawley*, 214 Pa. St. 525, 527, 63 A. 1021.

**Bequest in Lieu of Commissions.**

S. 2 Where a testator appoints or names one, or more executors, and makes a bequest or devise of property to them, in lieu of their commissions or allowances, or appoints them his residuary legatees, and said bequests, devises, or residuary legacies, exceed what would be a fair compensation for their services, such excess shall be subject to the payment of the collateral inheritance tax; the rate of compensation to be fixed by the proper courts having jurisdiction in the case.

**When Tax Accrues on Remainders. — Lien. — Returns.**

S. 3. In all cases where there has been or shall be a devise, descent or bequest to collateral relatives or strangers, liable to the collateral inheritance tax, to take effect in possession, or come into actual enjoyment after the expiration of one or more life estates, or a period of years, the tax on such estate shall not be payable, nor interest begin to run thereon, until the person or persons liable for the same shall come into actual possession of such estate, by the termination of the estates for life or years, and the tax shall be assessed upon the value of the estate at the time the right of possession accrues to the owner as aforesaid: Provided, That the owner shall have the right to pay the tax at any time prior to his coming into possession, and in such cases, the tax shall be assessed on the value of the estate at the time of the payment of the tax, after deducting the value of the life estate or estates for years: And provided further, That the tax on real estate shall remain a lien on the real estate on which the same is chargeable until paid. And the owner of any personal estate shall make a full return of the same to the register of wills of the proper county within one year from the death of the decedent, and within that time enter into security for the payment of the tax to the satisfaction of such register; and in case of failure so to do the tax shall be immediately payable and collectible.

[See notes to the Act of 1850, *ante*, p. 1049.]

**“The Tax . . . shall not be Payable.” — Increase in Value of Estate after Death of Decedent.**

The tax on the remainder after a life estate is not payable until the termination of the life estate, provided the security for its payment be given. *In re Budd*, 12 Pa. Co. Ct. 476.

The will directed the executor to pay all the collateral inheritance taxes on all the devises, bequests and legacies “as soon after my decease as the same can conveniently be done.” Under this provision the executor paid the tax on the entire estate at its valuation at that time. Subsequently, the life tenant having died, the state claimed the tax on the remainders on the ground that it was not due until the remainders came into possession, and that the value of the estate having increased in the meantime, the tax is payable on its present value. The words “shall not be payable” mean only “shall not be demandable” by the state, as the right of the remaindermen to pay sooner is expressly given in the proviso to the same section; and the tax having been paid on the value at the

death of the testator, no further tax can be now collected. *In re De Borbon*, 211 Pa. St. 623, 61 A. 244.

**"Until the Person Liable . . . Shall Come into Actual Possession."**

Under this section the tax on a remainder is not payable until "the person liable for the same" shall come into actual possession. "This cannot possibly mean any one but the remainderman, for he is the only one to come into actual possession by the termination of the precedent estate for life or years. The intent of the statute is to charge the beneficiary of the estate; and whether the phrase used is 'person liable,' or 'person who shall come into actual possession,' or 'owner,' it always means the same person, the remainderman."

The executors and administrators "cannot be compelled to make present payment of the tax on estates in remainder for the very obvious reasons that they are not the parties primarily charged with the payment, either present or future; they are not responsible for the owner's default of return and security which makes the future tax payable immediately, and in the present case they cannot pay it now without taking it out of the widow's estate, which is not liable to the tax at all." *In re Cox*, 181 Pa. St. 369, 37 A. 517.

**"Tax . . . Assessed . . . on the Value of the Estate at the Time the Right of Possession Accrues."**

Remaindermen should be taxed when they come into possession of real estate only on the clear value of the property at the death of the testator, after deducting debts of the estate. *Cooper v. Commonwealth*, 5 Pa. Co. Ct. 271.

**"Provided that the Owner Shall Have the Right to Pay the Tax."**

The remaindermen are entitled on the death of the decedent to pay the collateral inheritance tax on the residue of the estate after deducting the value of the life interest or, on the termination of the life estate, pay the tax on the entire valuation. *In re Von Storch*, 7 Pa. Dist. R. 204.

**Life Estate.**

The court holds that the will did not create a fee within the rule in *Shelley's case* under the facts, therefore only a life estate

was subject to the inheritance tax. *In re Belcher*, 211 Pa. St. 615, 61 A. 252.

*Remainders contingent* upon the devisees surviving the first taker are subject to tax, although it is not imperative that the tax be paid before the estates actually vest in possession. *In re Willing*, 11 Phila. 119.

*If the remaindermen are not ascertainable*, that is no reason why the tax should be collected from the life tenant who is exempt. The only effect of such condition would be that the tax would not be presently collectible at all, and the commonwealth would have to depend on its lien on the real estate and its claim on the executors when they make distribution. *In re Cox*e, 181 Pa. St. 369, 37 A. 517.

### **Remainderman Liable for Whole Tax when Life Tenant is Exempt.**

Under the Pennsylvania statutes as codified by the statute of 1887, in estates liable to the collateral inheritance tax, the commonwealth is entitled to a tax on the entire estate, and when the primary estate for life or years is exempt from liability as to a lineal descendant, the whole tax on the entire estate must be paid by the tenant in remainder. In such cases the time of payment is postponed until the estate comes into actual possession of the tenant liable. But nevertheless, if such tenant elect in anticipation to pay at the death of the decedent, the tax is assessable on the then valuation of the entire estate less the value of the estates for life or years. The act of 1887 did not change this law. *Appeal of Commonwealth*, 127 Pa. St. 435, 439.

### **Tax on Life Estate and Remainder Need not Total Five Per Cent.**

The Pennsylvania statute has never been held to mean that the tax upon the life estate added upon the estate in remainder should exactly equal five per cent of the principal of the legacy. *In re Christian*, 2 Pa. Co. Ct. 91, 18 Wkly. Notes Cas. 88.

### **No Appeal by Executors.**

The executors are not interested and therefore cannot appeal from the decision of the court on the question as to whether a tax is now due and payable or payable in the future, as the tax is payable by the legatees and not by the executors. *In re Handley*, 181 Pa. St. 339, 37 A. 587, reversing judgment 3 Lack. Leg. N. 9.

**Where Payment of Legacies Postponed.**

Where a title to a certain farm vested in the devisee and no estate for life or years intervened, but he was to have the use of the farm for ten years and at the expiration of ten years to have the farm in fee, and where certain legacies with interest were to be paid to the legatees after the expiration of ten years, the time of the payment of the legacies only was postponed; and hence neither the devise nor the bequests come within section 3 of the Pennsylvania statute of 1887, so as to postpone the payment of the collateral inheritance tax. *In re Dalrymple*, 215 Pa. St. 367, 373, 64 A. 554.

*Increase in value* after the death of the testator to the death of the life tenant should not be included. *Comm. v. Smith*, 20 Pa. St. (8 Harris) 100.

**Interest. — Discount.**

S. 4. If the collateral inheritance tax shall be paid within three months after the death of the decedent, a discount of five per centum shall be made and allowed, and if the said tax is not paid at the end of one year from the death of the decedent, interest shall then be charged at the rate of twelve per centum per annum on such tax; but where from claims made upon the estate, litigation, or other unavoidable cause of delay, the estate of any decedent or a part thereof cannot be settled up at the end of the year from his or her decease, six per centum per annum shall be charged upon the collateral inheritance tax, arising from the unsettled part thereof, from the end of such year until there be default; Provided further, That where real or personal estate withheld by reason of litigation or other cause of delay in manner aforesaid from the parties entitled thereto, subject to said tax, has not been, or shall not be productive to the extent of six per centum per annum, they shall not be compelled to pay a greater amount as interest to the commonwealth than they may have realized, or shall realize from such estate during the time the same has been or shall be withheld as aforesaid.

[See notes to the Act of 1850, *ante*, p. 1050. See also notes to the Act of 1855, *ante*, p. 1051.]

**“Where from Claims . . . Litigation, or Other Unavoidable Cause of Delay.”**

It is plain that where the estate is involved in litigation in order to collect its property the penalty is not to be recovered from failure to pay the tax within one year. *In re Miller*, 182 Pa. St. 157, 161, 37 A. 1000.

“Unavoidable delay” may be a misnomer of the trustee named in the will which was not discovered for some time. *In re Banks*, 5 Pa. Co. Ct. 614.

“Litigation” as set forth in the statute of 1887 as the cause of delaying the penalty for non-payment of the inheritance tax must be

such that the amount of tax due cannot be definitely ascertained until its determination as between the estate and adverse parties. *In re Small*, 12 Pa. Co. Ct. 226.

### **Penalty Charged to Administrator.**

The penalty under the inheritance tax law for failure to pay the tax should be charged to the administrator. *In re Palmer*, 2 Del. Co. Rep. (Pa.) 180.

An executor who neglects to pay an award on a collateral inheritance tax is personally liable for the penalty incurred. *In re Allen*, 9 Pa. Co. Ct. 328.

### **Tax Deducted.**

S. 5. The executor, or administrator, or other trustee, paying any legacy or share in the distribution of any estate, subject to the collateral inheritance tax, shall deduct therefrom at the rate of five dollars in every hundred dollars, upon the whole legacy or sum paid; or if not money, he shall demand payment of a sum, to be computed at the same rate, upon the appraised value thereof, for the use of the commonwealth; and no executor or administrator shall be compelled to pay or deliver any specific legacy or article to be distributed, subject to tax, except on the payment into his hands of a sum computed on its value as aforesaid; and in case of neglect or refusal on the part of said legatee to pay the same, such specific legacy or article, or so much thereof as shall be necessary, shall be sold by such executor or administrator at public sale, after notice to such legatee, and the balance that may be left in the hands of the executor or administrator shall be distributed, as is or may be directed by law; and every sum of money retained by any executor or administrator, or paid into his hands on account of any legacy or distributive share, for the use of the commonwealth, shall be paid by him without delay.

### **Conditional or Contingent Estates.**

S. 6. If the legacy subject to collateral inheritance tax be given to any person for life, or for a term of years, or for any other limited period, upon a condition or contingency, if the same be money, the tax thereon shall be retained upon the whole amount; but if not money, application shall be made to the orphans' court having jurisdiction of the accounts of the executors or administrators to make apportionment, if the case requires it, of the sum to be paid by such legatees, and for such further order relative thereto as equity shall require.

### **Out of Real Estate.**

S. 7. Whenever such legacy shall be charged upon or payable out of real estate, the heir or devisee, before paying the same, shall deduct therefrom at the rate aforesaid, and pay the amount so deducted to the executor; and the same shall remain a charge upon such real estate until paid, and the payment thereof shall be enforced by the decree of the orphans' court, in the same manner as the payment of such legacy may be enforced.



**Information as to Real Estate.**

S. 8. Whenever any real estate of which any decedent may die seized shall be subject to the collateral inheritance tax, it shall be the duty of executors and administrators to give information thereof to the register of the county, where administration has been granted, within six months after they undertake the execution of their respective duties, or if the fact be not known to them within that period, within one month after the same shall have come to their knowledge, and it shall be the duty of the owners of such estate, immediately upon the vesting of the estate, to give information thereof to the register having jurisdiction of the granting of administration.

**Receipts.**

S. 9. It shall be the duty of any executor or administrator, on the payment of collateral inheritance tax, to take duplicate receipts from the register, one of which shall be forwarded forthwith to the auditor general, whose duty it shall be to charge the register receiving the money with the amount, and seal with the seal of his office, and countersign the receipt and transmit it to the executor or administrator, whereupon it shall be a proper voucher in the settlement of the estate; but in no event shall an executor or administrator be entitled to a credit in his account by the register, unless the receipt is so sealed and countersigned by the auditor general.

**Payable on Transfer.**

S. 10. Whenever any foreign executor, or administrator, or trustee, shall assign or transfer any stocks or loans in this commonwealth, standing in the name of the decedent, or in trust for a decedent, which shall be liable for the collateral inheritance tax, such tax shall be paid, on the transfer thereof, to the register of the county where such transfer is made; otherwise the corporation permitting such transfer shall become liable to pay such tax.

**Refund.**

S. 11. Whenever debts shall be proven against the estate of a decedent, after distribution of legacies from which the collateral inheritance tax has been deducted, in compliance with this act, and the legatee is required to refund any portion of a legacy, a portion of the said tax shall be repaid to him by the executor or administrator, if the said tax has not been paid into the state or county treasury, or by the county treasurer, if it has been so paid.

This section has been affected by St. 1899, c. 15, approved March 22, 1899, which provides for the refunding of the inheritance tax after payment where it appears that the tax was not due on account of lineal heirs being subsequently discovered. This section has been further affected by St. 1901, c. 25, *ante*, p. 1086, extending the time for applications for a refund of taxes erroneously paid.

**Appraisal.**

S. 12. It shall be the duty of the register of wills of the county, in which letters testamentary, or of administration are granted, to appoint an appraiser as often as and whenever occasion may require to fix the valuation of estates which are, or shall be, subject to collateral inheritance tax, and it shall be the duty of such appraiser to make a fair and conscionable appraisal of such estates, and it shall further be the duty of such appraiser to assess and fix the cash value of all annuities and life estates growing out of said estates, upon which annuities and life estates the collateral inheritance tax shall be immediately payable out of the estate at the rate of such valuation: Provided, That any person or persons not satisfied with said appraisal shall have the right to appeal, within thirty days, to the orphans' court of the proper county or city, on paying, or giving security to pay, all costs, together with whatever tax shall be fixed by said court, and upon such appeal said courts shall have jurisdiction to determine all questions of valuation, and of the liability of the appraised estate for such tax, subject to the right of appeal to the supreme court as in other cases.

**Appraisal of Legacy of Right to Use.**

Where the widow is given power to appropriate the residue to her own use for life with the remainder over of the surplus, the amount of it and the tax upon it can only be ascertained after her death. *In re Nieman*, 131 Pa. St. 346, 351, 18 A. 900.

**Deduction of Debts.**

The Pennsylvania statute of 1826 imposes a tax only on what remains for distribution after the expenses and debts are paid and provided for. It is not on the succession to the beneficiaries and not on the securities in which the estate was invested. *Appeal of Orcutt*, 97 Pa. St. 179.

The tax is imposed after the expenses of administration and debts are deducted, but this does not include the expense of counsel and litigation among persons claiming as distributees. *In re Lines*, 155 Pa. St. 378, 391, 26 A. 728, 32 Wkly. Notes Cas. 376.

The tax is to be assessed upon the clear value of the property which can be ascertained only by allowing for all lawful charges, and where the parties assent to the correctness of the estimate of expenses the register has no discretion but to allow it unless there was ground for a suspicion of fraud. *In re Cullen*, 8 Pa. Co. St. 234.

Where the land of the decedent passes to lineal descendants for life and at their death to collateral heirs, although the real estate descends intact to the collateral heirs, the tax must be assessed upon the valuation of the real estate after deducting the debts owing by the decedent at the time of his death. *Appeal of Commonwealth*, 127 Pa. St. 435, 440.

*Where the executor was doubtful* whether seven thousand dollars would cover the expense of final settlement of an estate, the court ordered the amount of seven thousand dollars be retained by the executor for contingent expenses which may be incurred in the final settlement and that interest at six per cent be computed on five per cent of the balance from one year after the death of the testator until the date of the decree. *In re Miller*, 182 Pa. St. 157, 162, 37 A. 1000.

### **Claims of Mortgagors.**

Under the Pennsylvania statute of 1887, debts due to a resident of Pennsylvania by persons living in other states are taxable, although payment is secured by mortgages on lands of the debtors in the states in which they reside. *In re Stanton* (Orph. Ct.), 3 Pa. Dist. R. 371, 34 Wkly. Notes Cas. 391.

### **Only One Appraisal.**

Where the decedent died in 1884 and an appraiser was appointed who by mistake omitted certain property out of the estate, there is no remedy for that mistake except an appeal; and the second appraisal is without authority under the statute of 1849, P. L. 571, s. 12. *In re Money Penny*, 181 Pa. St. 309, 37 A. 589.

### **Notice. — Appeal.**

There need be no notice of the appointment of the appraiser, of the time and place of a hearing for the parties, and of the intended filing of the appraisal. These things may be desirable but they are not essential as the statutes do not require them. On the appraisal the statute gives a right of appeal which necessarily implies notice, but there is no provision for a hearing except in the orphans' court upon appeal; and hence an appeal within thirty days of the notice of the filing of the appraisal was in time. *In re Belcher*, 211 Pa. St. 615, 619, 61 A. 252.

### **Income after Death not Considered.**

The collateral inheritance tax is imposed only upon the estate owned by a decedent at the time of his death and not upon interest or income subsequently arising. *In re Miller*, 5 Pa. Co. Ct. 522, 22 Wkly. Notes Cas. 11.

*The net income* arising from property is to be taken into consideration on the question of its appraisal. *In re Kaas*, 5 Pa. Co. Ct. 583.

**Apportionment. — Expense of Audit.**

This appraisalment should appraise each separate interest and therefore there can be no necessity for an apportionment of the tax as this should have been done by the appraiser. Where the appraisal is made by the auditor, the collateral heirs are properly chargeable with the expense of the audit resorted to as a substitute for the appraisalment directed by law. *In re Burkhart*, 25 Pa. Super. Ct. 514.

*Life estates* for the purposes of the tax are to be appraised at their cash value in the same manner as annuities. This means such a sum that if invested and put at interest it will, with a proportionate part taken from the fund yearly to make out the annuity, yield the required amount of it annually, the whole fund being exhausted during the expectancy of life of the annuitant. Citing with approval the *Case of Handley*, 3 L. L. N. 9, 181 Pa. St. 339, 37 A. 587. *In re Von Storch*, 7 Pa. Dist. R. 204.

**Life Estate and Remainder.**

Where there is a life estate and remainder and the executors pay the tax on the whole estate on the death of the testator, there is no requirement that the values of the life estate and remainders respectively shall be appraised separately. *In re De Borbon*, 211 Pa. St. 623, 61 A. 244.

This section has been amended by St. 1895, c. 243, approved June 26, 1895, which fixes the compensation of appraisers at \$2.00 per diem and traveling expenses, and provides for expert appraisers when necessary.

This section makes it the duty of the register of wills to appoint an appraiser, and the appraiser must be appointed by the register of the county in which the decedent had his residence at the time of his death, or of the county in which is the principal part of his estate. *In re Dalrymple*, 215 Pa. St. 367, 372, 64 A. 554.

**Appraisers to Take no Fees.**

S. 13. It shall be a misdemeanor in any appraiser, appointed by the register to make any appraisalment in behalf of the commonwealth, to take any fee or reward from any executor or administrator, legatee, next of kin, or heir of any decedent, and for any such offense the register shall dismiss him from such service, and upon conviction in the quarter sessions, he shall be fined not exceeding five hundred dollars, and imprisoned not exceeding one year, or both, or either at the discretion of the court.

**Records.**

S. 14. It shall be the duty of the register of wills to enter in a book, to be provided at the expense of the commonwealth, to be kept for that purpose, and which shall be a public record, the returns made by all appraisers under this act, opening an account in favor of the commonwealth against the decedent's estate, and the register may give certificate of payment of such tax from said record; and it shall be the duty of the register to transmit to the auditor general, on the first day of each month, a statement of all returns made by appraisers during the preceding month, upon which the taxes remain unpaid which statement shall be entered by the auditor general in a book to be kept by him for that purpose. And whenever any such tax shall have remained due and unpaid for one year, it shall be lawful for the register to apply to the orphans' court, by bill or petition, to enforce the payment of the same; whereupon said court, having caused due notice to be given to the owner of the real estate charged with the tax, and to such other persons as may be interested, shall proceed, according to equity, to make such decrees, or orders, for the payment of the said tax, out of such real estate, as shall be just and proper.

**Citation.**

S. 15. If the register shall discover that any collateral inheritance tax has not been paid over, according to law, the orphans' court shall be authorized to cite the executors or administrators of the decedent, whose estate is subject to the tax, to file an account or to issue a citation to the executors, administrators, or heirs, citing them to appear on a certain day and show cause why the said tax should not be paid; and when personal service cannot be had, notice shall be given for four weeks, once a week, in at least one newspaper published in said county; and if the said tax shall be found to be due and unpaid, the said delinquent shall pay said tax and costs. And it shall be the duty of the register, or the auditor general, to employ an attorney, of the proper county, to sue for the recovery and amount of such tax, and the auditor general is authorized and empowered, in settlement of accounts of any register, to allow him costs of advertising and other reasonable fees and expenses incurred in the collection of tax.

The orphans' court has jurisdiction under this section to compel the parties to furnish the appraiser with information necessary to assess the tax. *In re Maris*, 14 Pa. Co. Ct. 171, 3 Pa. Dist. 33.

**Commissions for Collection.**

S. 16. The registers of wills, of the several counties of this commonwealth, upon their filing with the auditor general the bond hereinafter required shall be the agents of the commonwealth for the collection of the collateral inheritance tax; and for services rendered in collecting and paying over the same, the said agents shall be allowed to retain, for their own use, such percentage as may be allowed by the auditor general, not exceeding five per centum on all taxes paid and accounted for: Provided, That this section shall not apply to the fees of registers elected prior to the passage of this act.

This section has been amended by St. 1891, c. 50, approved May 14, 1891. which provides definitely for the compensation to

the registers of wills for services in collecting the inheritance tax at 5 per cent, amending Pa. St. 1887, c. 37, s. 16.

Under Pa. St. 1876, P. L. c. 13, s. 9, registers of wills of certain counties were required to pay into the county treasurer all commissions received by them from the state for the collection of collateral inheritance taxes. The court, however, finds that Pa. St. 1887, P. L. 79, s. 16, was intended to apply to all the counties of a state and cannot be construed in harmony with the provisions of the statute of 1876, and therefore repeals it.

The first act imposing upon the register of wills the duty of collecting the collateral inheritance tax was the statute of 1841, P. L. c. 99, s. 1. This statute of 1841 left it optional with the register of wills whether he should collect the inheritance taxes or not, but this duty was definitely imposed upon him by Pa. St. 1849, P. L. c. 570.

Pa. St. 1876, P. L. c. 13, s. 9, was repealed by Pa. St. 1887, P. L. c. 37, s. 16, which re-enacted the provisions of the act of 1841. *Allegheny County v. Stengel*, 213 Pa. St. 493, 63 A. 58.

#### **Bond of Register.**

S. 17. The said register shall give bond to the commonwealth in such penal sum as the orphans' court of the county may direct with two or more sufficient sureties for the faithful performance of the duties hereby imposed, and for the regular accounting and paying over of the amounts to be collected and received, and said bond, on its execution and approval, by the said orphans' court, to be forwarded to the auditor general.

#### **Collection by County Treasurer.**

S. 18. Until bond and security be given, as required by the preceding section, the said collateral inheritance tax shall be received and collected by the county treasurer as heretofore, and in such cases all the provisions of this act, relating to collection and payment by registers, shall apply to the county treasurer.

#### **Returns by Register.**

S. 19. It shall be the duty of the register of wills, of each county, to make returns and payment to the state treasurer of all the collateral inheritance taxes he shall have received, stating for what estate paid, on the first Mondays of April, July, October and January, in each year; and for all taxes collected by him and not paid over within one month, after his quarterly return of the same, he shall pay interest at the rate of twelve per centum per annum until paid.

#### **Lien.—Limitations.**

S. 20. The lien of the collateral inheritance tax shall continue until the said tax is settled and satisfied: Provided, That the said lien shall be limited to the property chargeable therewith: And provided further, That all collateral inheritance taxes shall be sued for within five years after they are due and legally demand-

able, otherwise they shall be presumed to have been paid, and cease to be a lien as against any purchasers of real estate: And provided further, That all taxes due and legally demandable at the date of the passage of this act, the collection of which would be barred by the provisions hereof, shall not be barred if suit shall be brought therefor within one year from the date of the passage of this act.

### **Judicial Sale on Lien.**

The intestate died leaving real estate which was apportioned among his collateral heirs after his death. Subsequently the share of one of the heirs was sold by judicial sale to satisfy debts and liens against the heir; and the court holds that the lien of the whole of the collateral inheritance tax on the whole of the land was satisfied and discharged by this sale, inasmuch as the money realized from the sale was more than sufficient to have paid the tax lien, and should have been so applied. The fact that the amount of the lien had not been ascertained cannot affect the result. *Appeal of Mellon*, 114 Pa. St. 564, 574, 8 A. 183.

Where the decedent owned an undivided third of an entire tract of land, partition of his interest could not have the effect of apportioning the lien and fixing a part thereof exclusively on any one portion of the land. *Appeal of Mellon*, 114 Pa. St. 564, 574, 8 A. 138.

### **Protection of Bona Fide Purchasers after Lapse of Time.**

Where the state fails to collect the collateral inheritance tax for a period of twenty years from the death of the decedent, a presumption of payment arises as to bona fide purchasers from those to whom the remainder in fee descended. *Appeal of Mellon*, 114 Pa. St. 564, 573, 8 A. 183.

### **Personal Liability of Executors not Barred.**

The provision of the statute of 1887, section 20, that all collateral inheritance taxes should be sued for within five years after they are due, otherwise they shall be presumed to have been paid. does not imply that the personal liability of the executors shall not continue, and the state is not barred from collecting the tax by reason of the lapse of more than five years from the death of the decedent before proceeding to enforce payment. *In re Cullen*, 8 Pa. Co. Ct. 234.

### **Repeal.**

S. 21. All laws, or parts of laws, heretofore approved, relating to the collection of the collateral inheritance tax, and inconsistent herewith, be and the same are hereby repealed.

## PHILIPPINE ISLANDS.

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U. S. St. July 1, 1902, providing for a civil government for the Philippine Islands, does not appear to contain any specific provision as to inheritance taxes. It does provide, in section 5, "that the rule of taxation in said islands shall be uniform." See Thorpe, Vol. v, p. 3168.

## PORTO RICO.

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### In General.

1901. Statutes of Porto Rico, Title 3, pp. 43, 94, ss. 94-111.

1902. Revised Statutes & Codes. Political Code, chapter 3, ss. 368-383.

### The Enabling Act.

The Porto Rican Act for the civil government of Porto Rico of April 12, 1900, seems to contain no provision for uniformity of taxation or as to inheritance tax.

### Statutes.

Porto Rico St. 1901, approved January 1, 1901, entitled "An act to provide revenue for the people of Porto Rico and for other purposes," p. 94, s. 94, provides taxes imposed under the revised statutes of 1902, s. 94, *et seq.*

Porto Rico Revised St. and Codes of 1902, c. 3, s. 368, provides that all real property within Porto Rico whether belonging to inhabitants of Porto Rico or not and all personal property belonging to inhabitants of Porto Rico passing by will or inheritance or by grant intended to take effect in possession or enjoyment after the death of the grantors, other than to or for the use of the wife, child, grandchild, or adopted child is subject to tax with an exemption where the property passing to any one person is valued at \$200 or less. And provided further that when the value of such property exceeds \$200 that amount shall be deducted in estimating the taxes thereon.

Porto Rico Revised Statutes and Codes of 1902, c. 3, s. 369, imposes taxes at the following rates. Where the inheritance does not exceed \$5,000 the husband or lineal descendants pay one per cent and all other relatives and other persons pay three per cent. Where the gift exceeds \$5,000 but does not exceed \$20,000 there shall be paid on the excess over \$5,000 one and one half times the primary rates. Where the gift exceeds \$20,000 but does not exceed \$50,000 there shall be paid on the excess over \$20,000 twice the primary rates. Where the gift exceeds \$50,000, three times the primary rates is levied on the excess.

Porto Rico Revised Statutes and Codes of 1902, c. 3, ss. 370-383, cover the assessment and collection of the tax.



## **RHODE ISLAND.**

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### **In General.**

Rhode Island has no inheritance tax of any kind, although attempts were made in 1910 and 1911 to enact one.

### **Constitutional Limitations.**

**Rhode Island Constitution, 1842, a. 4, s. 15.**

The general assembly shall, from time to time, provide for making new valuations of property, for the assessment of taxes, in such manner as they may deem best. A new estimate of such property shall be taken before the first direct state tax, after the adoption of this constitution, shall be assessed.

## **SOUTH CAROLINA.**

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South Carolina has no inheritance tax and never had one.

### **Constitutional Limitations.**

**South Carolina Constitution, 1895, a. 10, s. 1.**

The general assembly shall provide by law for a uniform and equal rate of assessment and taxation, and shall prescribe regulations to secure a just valuation for taxation of all property, real, personal and possessory, except mines and mining claims, the products of which alone shall be taxed; and also excepting such property as may be exempted by law for municipal, educational, literary, scientific, religious or charitable purposes; Provided, however, That the general assembly may impose a capitation tax upon such domestic animals, as from their nature and habits are destructive of other property: And provided, further, That the general assembly may provide for a graduated tax on incomes, and for a graduated license on occupations and business.

## **SOUTH DAKOTA.**

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### **List of Statutes.**

1905. Statutes of South Dakota, c. 54.

1910. Compiled Laws of South Dakota, Vol. 1, pp. 549-553.

### **In General.**

South Dakota had no inheritance tax until the progressive statute of 1905, which has recently been upheld on rehearing, though at first declared void on the ground that its progressive feature affects the rate on the whole legacy and not merely on the excess above the minimum.

The exemptions apply to individual shares, not to the estate as a whole.

A tax is not claimed on stock of South Dakota corporations owned by a non-resident and kept outside the state, though there is the usual provision holding the corporation responsible for the tax. It is not the practice to require an inventory of the estate of a non-resident.

### **Constitutional Limitations.**

**South Dakota Constitution, 1889, a. 11, s. 2.**

All taxes to be raised in this state shall be uniform on all real and personal property, according to its value in money, to be ascertained by such rules of appraisement and assessment as may be prescribed by the legislature by general law, so that every person and corporation shall pay a tax in proportion to the value of his, her or its property. And the legislature shall provide by general law for the assessing and levying of taxes on all corporation property as near as may be by the same methods as are provided for assessing and levying of taxes on individual property.

A. 6, s. 17, further provides that "no tax or duty shall be imposed without the consent of the people or their representatives in the legislature, and all taxation shall be equal and uniform."

This latter provision is contained in the constitution of no other state except in the revenue article of the Oregon constitution 1857, section 33. *In re McKennan* 25 S. D. 369, 126 N. W. 611, 618. (reversed on rehearing, 130 N. W. 33).

**South Dakota Constitution, 1889, a. 11, s. 8.**

No tax shall be levied except in pursuance of a law, which shall distinctly state the object of the same, to which the tax only shall be applied.

The statute of 1905 was entitled "An act to tax gifts, legacies and inheritances in certain cases and to provide for the collection of the same, and fixing penalties."

The court holds that article 11 of the constitution has no bearing upon tax legislation of the nature under consideration. There is certainly inherent in this method of raising revenue good reason why the law should not apply for the application of such revenue as this source of revenue must necessarily be one uncertain as to its returns.

But apart from this the court is satisfied that article 11, section 8, clearly refers to the ordinary property tax which at the time it is levied can be levied with knowledge as to the probable amount of revenue that will be derived therefrom and can thus be well rendered to meet the uses to which the same shall be applied. *In re McKennan*, 25 S. D. 369, 126 N. W. 611 (reversed on rehearing, 130 N. W. 33), citing with approval *Matter of McPherson*, 104 N. Y. 315, 10 N. E. 685.

**THE STATUTE OF 1905.**

**South Dakota St. 1905, c. 54.** Approved March 6, 1905.

**AN ACT TO TAX GIFTS, LEGACIES AND INHERITANCES IN CERTAIN CASES, and to provide for the collection of the same, and fixing penalties.**

**S. 1. Transfers Taxable. — Rates.** That all property, real, personal and mixed, which shall pass by will or by the intestate laws of this state, or according to the provision of any statute in this state, from any person who may die seized or possessed of the same while a resident of this state, or if decedent was not a resident of this state at the time of his death, which property, or any part thereof, shall be within this state, or any interest therein or income therefrom which shall be transferred by deed, grant, sale or gift made in contemplation of the death of the grantor, or bargainor or giver, or intended to take effect in possession or enjoyment after such death, to any person or persons or to any body politic or corporate in trust or otherwise, or by reason whereof any person or any body politic or corporate shall become beneficially entitled, in possession or expectancy, to any property or income thereof, shall be and is subject to a tax at the rate hereinafter specified, to be paid to the treasurer of the proper county for the use of the state, and all heirs, legatees and devisees, administrators, executors and trustees shall be liable for any and all such taxes until the same shall have been paid as hereinafter directed.

When the beneficial interests to any property or income therefrom shall pass to or for the use of any father, mother, husband, wife, child, brother, sister, wife

or widow of the son, or husband of the daughter, or any child or children adopted as such in conformity with the laws of the state of South Dakota, or to any person to whom the deceased, for not less than ten years prior to death, stood in the acknowledged relation of a parent, or to any lineal descendant born in lawful wedlock; in every such case the rate of tax shall be one dollar on every one hundred dollars of the clear market value of such property received by each person, and at and after the same rate for every less amount. Estates of the clear market value of twenty thousand dollars or less transferred to the widow of the deceased, and five thousand dollars to each of the other persons above mentioned, shall be exempt.

When the beneficial interest to any property or income therefrom shall pass to or for the use of any uncle, aunt, niece, nephew or any lineal descendant of the same, in every such case the rate of such tax shall be two dollars on every hundred dollars of the clear market value of such property received by each person. Estates of the clear market value of five hundred dollars transferred to each of the persons last above mentioned shall be exempt.

In all other cases the rate shall be as follows: On each and every one hundred dollars of the clear market value of all property and at the same rate for any less amount on all estates of ten thousand dollars and less, four dollars; on all estates of over ten thousand dollars, and not exceeding twenty thousand dollars, six dollars; on all estates over twenty thousand dollars and not exceeding fifty thousand dollars, eight dollars; and on all estates over fifty thousand dollars, ten dollars. Estates of the clear market value of one hundred dollars, transferred to each of the parties mentioned in the last named class, shall be exempt.

The taxes so imposed by this act shall be upon the clear market value of such property at the rates above prescribed for each class and only upon the excess above the exemption herein provided.

### **Nature of Tax.**

This act does not impose a tax upon the right to inherit or to succeed, nor upon the right to transmit, but a tax upon the exercise of such right — upon the transmission of property. It is clearly a tax, and has nothing to do with and is not at all dependent for its validity upon the right to regulate the succession of property. *In re McKennan* 25 S. D. 369, 126 N. W. 611 (reversed on rehearing 130 N. W. 33), citing *Knowlton v. Moore*, 178 U. S. 41, 20 S. Ct. 747.

### **Nature of Right of Succession.**

Most courts follow the old common law doctrine that the so-called right to transmit property, or to inherit or succeed to the same, is but a privilege granted by a statute. Only one court that of Wisconsin, holds it to be an inherent right. *Nunnemacher v. State*, 129 Wis. 190, 108 N. W. 627, 9 L. R. A. N. S. 121. (See, however, also, *Minot v. Winthrop*, 162 Mass. 113, 38 N. E. 512, 26 L. R. A. 259.) *In re McKennan*, 25 S. D. 369, 126 N. W. 611 (reversed on rehearing 130 N. W. 33).

**Validity of Exemptions.**

S. D. Constitution, a. 11, ss. 5, 6, 7, provide exemptions from taxation of public and charitable property. But the court holds that these exemptions apply only to a tax upon property and do not in any sense control a tax upon the transmission of property like the inheritance tax.

The exemption in South Dakota statute 1905, c. 54, to the widow and other heirs, is not contrary to South Dakota constitution, article 11, section 7, limiting exemptions to certain specified property. *In re McKennan* 25 S. D. 369, 126 N. W. 611, 615 (reversed on rehearing, 130 N. W. 33).

**Valid though no Provision for Enforcement.**

The South Dakota statute of 1905 is not invalid for failure to provide any method for its enforcement. Where section one of the act clearly creates a liability on the part of recipients of inherited estate to pay the amount of any tax to the county treasurer for the use of the state, there is no reason why the county treasurer might not maintain an ordinary action, based upon the liability that thus is created to pay, against the beneficiaries to recover the tax for the use of the state. *In re McKennan* (S. D. 1911), 130 N. W. 33 (reversing judgment on rehearing, 25 S. D. 369, 126 N. W. 611).

**Progressive Tax Upheld.**

The progressive tax under South Dakota statute of 1905, where the increased rate applies to the whole legacy in a large estate, is valid. The court holds that this is logically, legally and constitutionally in the same category as classification based on the net increased amount of a higher over a lower class.

The court in an elaborate opinion upholds the constitutionality of the South Dakota statute of 1905, chapter 54, and the court quotes at length the history of inheritance tax legislation with reference to the requirement of uniformity, and finds that the classification in the statute of 1905 does not violate the requirement of equality and uniformity. *In re McKennan* (S. D. 1911), 130 N. W. 33 (reversing judgment on rehearing, 25 S. D. 369, 126 N. W. 611).

**The Original Opinion Reversed on Rehearing.**

The court construes the clause requiring all taxation to be equal and uniform as meaning that the burden imposed shall fall alike

on all persons who are in substantially the same situation; and the court finds that the progressive feature of the South Dakota statute is unconstitutional and void.

The court notices the two arguments—the recipient of the large amount is able to pay a larger rate of tax, and that it is against public policy to allow large estates to be held together by transmission after the death of the owners—but it finds that there are two methods of progression provided for in the statutes of the several states: one found in South Dakota (St. 1905, c. 54) wherein the higher rate in the case of transmission of a greater devise or bequest is levied upon the whole value of the property transmitted; the other, like that found in the Wisconsin statute, where the increased rate applies only to the excess in value of property transmitted over the amount subject to the next lower rate. The court remarks that if any difference is to be made in the rate of taxation between a large legacy and a small legacy on the theory that the increased ability to pay is greater in the case of the large beneficiary than of the smaller, that it cannot be said that the increased ability to pay of a devisee receiving \$20,000 over that of one receiving \$10,000 comes from the receipt of his first \$10,000. The increased ability to pay does come solely from the receipt of the second \$10,000. "It is ridiculous to say that a man who receives a devise or legacy of a thousand and one dollars is as well able to pay a tax of \$594.06 as is a man who receives ten thousand dollars to pay \$396. We have never discovered any method of making one dollar pay \$198.06."

If the progressive tax is based on the theory that it is against public policy to allow large estates to be held together by transmission after the death of the owners, which is the theory that seems the more reasonable to the court, the court replies that "if one person receives \$20,000 and another \$10,000, it was no greater privilege for the first to receive his first \$10,000 than for the second. The increased privilege is all found in receiving of the extra \$10,000 and it is the exercise of this extra privilege, the transmission of the extra \$10,000, that should receive the extra burden of taxation."

"It must be conceded that if the legislature can fix rates of taxation it can increase such rates, and upon grounds of public policy it might place a limit in the value above which all transmissions would go to the state." *Per* Whiting, P. J., in *In re McKennan*, 25 S. D. 369, 126 N. W. 611, 618 (reversed on rehearing, 130 N. W. 33).

**Life Estates. — Remainders.**

S. 2. When any person shall bequeath or devise any property or interest therein or income therefrom to mother, father, husband, wife, brother, sister, the widow of a son or a lineal descendant during life or for a term of years, or the remainder to the collateral heir of the decedent or to a stranger in blood or body corporate at their decease, or on the expiration of such term the said life estate or estate for a term of years shall not be subject to any tax, and the property so passing shall be appraised immediately after the death at what was the fair market value thereof at the time of the death of the decedent in the manner hereinafter provided, and after deducting therefrom the value of said life estate or term of years the tax prescribed by this act on the remainder shall be immediately due and payable to the treasurer of the proper county, and together with the interest thereon shall be and remain a lien on said property until paid. Provided, that the person or persons or body politic or corporate beneficially interested in the property chargeable with said tax may elect not to pay the same until they shall come into the actual possession or enjoyment of such property, and in that case said person or persons or body politic or corporate shall execute a bond to the state of South Dakota in a penalty three times greater than the amount of said tax, with such surety as the judge of the county court of the proper county may approve, conditioned for the payment of said tax and interest thereon at such time or period as they or their representatives may come into the actual possession or enjoyment of said property; said bond shall be filed in the office of the clerk of the county court of the proper county. Provided, further, that such person shall make a full, verified return of such property, and file the same in the office of the clerk of the county court of the proper county within one year from the death of the decedent and within that period enter into such security, and renew the same every five years.

**When Tax Accrues. — Interest.**

S. 3. All taxes imposed by this act, unless otherwise herein provided for, shall be due and payable at the death of the decedent, and interest at the rate of six per cent per annum shall be charged and collected thereon for such times as said tax is not paid. Provided, that if said tax is paid within twelve months from the accruing thereof, interest shall not be charged or collected thereon, but a discount of five per cent shall be allowed and deducted from said tax, and in all cases where the executors, administrators or trustees do not pay such tax within one year from the death of the decedent they shall be required to give a bond in the form and to the effect prescribed in section two of this act for the payment of said tax, together with interest.

**Enforcing Payment.**

S. 4. Any administrator, executor or trustee having in charge or trust any legacies or property for distribution subject to the said tax shall deduct the tax therefrom, or if the legacy or property be not money he shall collect a tax thereon upon the appraised value thereof from the legatee or person entitled to such property, and he shall not deliver or be compelled to deliver any specific legacy or property subject to tax to any person until he shall have collected the tax thereon, and whenever any such legacy shall be charged upon or payable out of real estate the heir or devisee before paying the same shall deduct said

tax therefrom and pay the same to the executor, administrator or trustee, and the same shall remain a charge on said real estate until paid, and the payment thereof shall be enforced by the executor, administrator or trustee in the same manner that the payment of such legacy might be enforced; if, however, such legacy be given in money to any person for a limited period he shall retain the tax upon the whole amount, but if it be not in money he shall make application to the court having jurisdiction of his accounts to make an apportionment if the case requires it, of the sum to be paid into his hands by said legatees and for such further order relative thereto as the case may require.

#### **Power of Sale.**

S. 5. All executors, administrators and trustees shall have full power to sell so much of the property of the decedent as will enable them to pay said tax in the same manner as they may be enabled by law to do for the payment of debts of their testators and intestates, and the amount of said tax shall be paid as hereinafter directed.

#### **Payment.**

S. 6. Every sum of money retained by any executor, administrator or trustee or paid into his hands for any tax on any property shall be paid by him within thirty days thereafter to the treasurer of the proper county, and said treasurer shall give, and every executor, administrator or trustee shall take, duplicate receipts from him of such payment, one of which receipts he shall immediately send to the treasurer of state, whose duty it shall be to charge the treasurer so receiving said tax with the amount thereof, and said treasurer of state shall seal said receipt with the seal of his office and countersign the same and return it to said executor, administrator or trustee, whereupon it shall be a proper voucher in the settlement of his accounts, but said executor, administrator or trustee shall not be entitled to credit in his accounts or be discharged from liability for such tax unless he shall produce a receipt so sealed and countersigned by the treasurer of state, or a copy thereof, duly certified by such treasurer.

#### **Notice to County Treasurer.**

S. 7. Whenever any of the real estate of which any decedent may die seized shall pass to any body politic, corporate or to any person or persons, or in trust for them, or some of them, it shall be the duty of the executor, administrator or trustee of such decedent to give information thereof in writing to the treasurer of the county where said real estate is situate within six months after undertaking the execution of their respective duties, or if the fact be not known to them within that period, then within one month after the same shall come to their knowledge.

#### **Refund on Proof of Debts.**

S. 8. Whenever debts shall be proven against the estate of the decedent after the payment of legacies or distribution of property, from which said tax has been deducted, or upon which it has been paid and a refund is made by the legatee, devisee, heir or next of kin, a proportion of the tax so paid shall be repaid to him by the executor, administrator or trustee if said tax has not been paid to the county treasurer or to the treasurer of the state, and by them if it has been so paid.



**Transfer by Foreign Executor.**

S. 9. Whenever any foreign executor or administrator shall assign or transfer any stock or loans in this state standing in the name of a decedent, or any trustees for a decedent, which shall be liable to said tax, said tax shall be paid to the treasurer of the proper county on the transfer thereof, otherwise the party making or permitting such transfer shall become liable to pay such tax.

**Refund of Tax Paid under a Mistake.**

S. 10. When any amount of said tax shall have been paid erroneously to the treasurer of said state, it shall be lawful for him, on satisfactory proof rendered to him by the county treasurer of said erroneous payment, to refund and pay to the executor, administrator or person or persons who have paid such tax in error the amount of such tax so paid. Provided, that all such applications for the repayment of such tax shall be made within two years from the date of said payment.

**Appraisal.**

S. 11. In order to fix the value of property of persons whose estates shall be subject to the payment of such tax, the county judge, on application of any interested party or officer, or upon his own motion, shall appoint some competent person as appraiser, as often as and whenever occasion may require, whose duty shall be forthwith to give such notice by mail to all persons known to have or claim an interest in said property, and to such persons as the county judge may by order direct, of the time and place at which he will appraise such property, and at such time and place to appraise the same at a fair market value, and for that purpose the appraiser is authorized, by leave of the county judge, to use subpoena for and to compel the attendance of witnesses before him and to take the evidence of such witnesses under oath concerning such property and the value thereof, and he shall make a report thereof and of such value in writing, together with depositions of the witnesses examined and such other facts in relation thereto and of such matters as said judge may by order require to be filed in the office of the clerk of the county court, and from this report the said county judge shall forthwith assess and fix the then cash value of all estates, annuities and life estates or term of years growing out of said estate, and the tax to which the same is liable, and shall immediately cause notice by mail to be given to all parties known to be interested therein. Any person or persons dissatisfied with the appraisement or assessment may appeal therefrom, as provided for appeals from the county court, within sixty days after the making and filing of such appraisement or assessment, upon giving approved security for the payment of all costs, together with whatever taxes shall be ultimately adjudged. The said appraiser shall be paid by the county treasurer out of any funds he may have in his hands, upon the certificate of the county judge at the rate of three dollars for every day actually and necessarily employed on making said appraisement, with his actual and necessary traveling expenses as allowed and fixed by the judge of the county court.

**Misconduct of Appraisers.**

S. 12. Any appraiser appointed by virtue of this act who shall take any fee or reward from any executor, administrator, trustee, legatee, next of kin or heir

of any decedent, or from any other person liable to pay said tax or any portion thereof, shall be guilty of a misdemeanor and upon conviction thereof in any court of competent jurisdiction shall be fined not less than two hundred and fifty dollars or more than five hundred dollars and imprisoned not exceeding ninety days, and in addition thereto he shall be dismissed from such service.

#### **Jurisdiction of County Court.**

S. 13. The county court in the county in which the real property is situate of a decedent who was not a resident of the state, or of the county in which the decedent was a resident at the time of his death, shall have jurisdiction to hear and determine all questions in relation to the tax arising under the provisions of this act.

#### **Citation.**

S. 14. If it shall appear that any tax accruing under this act has not been paid according to law, a citation shall be issued, citing the person interested in the property liable to the tax to appear before the court on a day certain, not more than three months after the date of such citation, and show cause why such tax should not be paid. The process, practice and pleading and the hearing and determination thereof and the judgment in said court in such cases shall conform to the practice in other probate cases, and the fees and costs in such cases shall be the same as in probate cases in the county courts in this state.

#### **Notice to State's Attorney.**

S. 15. Whenever the treasurer of any county shall have reason to believe that any tax is due and unpaid under this act, after the refusal of the person interested in the party liable to said tax to pay the same, he shall notify the state's attorney of the proper county, in writing, of failure to pay such tax, and the state's attorney so notified, if he have probable cause to believe a tax is due and unpaid, shall prosecute the proceedings in the proper court as provided in section fourteen of this act for the enforcement and collection of such tax, and in such case said court shall allow as costs in said case, to be paid as said tax is paid, such fees to said attorney as he may deem reasonable.

#### **Statement of Property Taxable.**

S. 16. The judge and clerk of the county court of each county shall, every three months, make a statement in writing to the county treasurer of his county as to the property from which or the party from whom he has reason to believe a tax under this act is due and unpaid.

#### **County Court Record.**

S. 17. The clerk of the county court of each county shall procure a book, in which he shall enter the returns made by appraisers, the cash values of annuities, life estates, and terms of years and other property as fixed by the county court, together with the tax assessed thereon and the amount of any receipts for payments thereon filed with him, which book shall be a public record.

#### **Receipts.**

S. 18. Any person or body politic or corporate shall, upon the payment of the sum of fifty cents, be entitled to a receipt from the county treasurer, or a

copy of the receipt, at his option, that may have been given by said treasurer for the payment of any tax under this act, which receipt shall designate on what real property, if any, of which deceased may have died seized said tax has been paid, and by whom paid, and whether or not it is in full of said tax, and said receipt may be recorded in the office of the clerk of the county court of the county in which the property may be situate in the book provided for by section seventeen.

#### **Lien. — Limitations.**

S. 19. The lien of the collateral inheritance tax shall continue until the said tax is settled and satisfied. Provided, that said lien shall be limited to the property chargeable therewith. And, provided further, that all inheritance taxes shall be sued for within six years after they are due and legally demandable, otherwise they shall be presumed to be paid and cease to be a lien as against purchasers of said real estate only.

#### **Expenses of Summons.**

S. 20. Whenever the county judge of any county shall certify that there was probable cause for issuing a summons, and taking the proceedings specified in sections fourteen and fifteen of this act, the state treasurer shall pay or allow to the treasurer of any county all expenses incurred for service of summons and his other lawful disbursements that have not yet been paid.

#### **Payment to State Treasurer.**

S. 21. The treasurer of each county shall collect and pay the state treasurer all taxes that may be due and payable under this act, who shall give him a receipt therefor, of which collection and payment he shall make a report under oath to the county auditor on the first Monday in March and September of each year, stating for what estate paid, and in such form and containing such particulars as the county auditor may prescribe, and for all said taxes collected by him and not paid to the state treasurer by the first day of October and April of each year, he shall pay interest at the rate of six per cent per annum.

#### **Suggestions for New Statute.**

The court suggests that an inheritance statute, if it is to provide for taxation upon the transmission of property in contemplation of death, should clearly and distinctly provide for personal liability for such taxes on the part of the grantee; for a lien upon the property to secure such tax, such lien to rest on the property when the same is held by the grantee or any other party, not an innocent purchaser for value and without notice; and for an action, in a court of competent jurisdiction, to recover judgment and enforce the lien. *In re McKennan*, 25 S. D. 369, 126 N. W. 611 (reversed on rehearing, 130 N. W. 33).

## TENNESSEE.

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### In General.

Tennessee adopted a collateral inheritance tax in 1891 and extended the tax to direct inheritances in 1909. The exemption applies to the entire estate, not to the individual shares.

Tennessee is not attempting to collect a tax on stock in a Tennessee corporation owned by a non-resident when the shares are physically out of the state, although there is a clause holding the corporation responsible if it transfers stock for a foreign executor or administrator before the tax is paid, and the language of the statute does not differ materially from that in many states which tax such stock. The collateral inheritance tax was producing about \$50,000 annually. The addition of direct inheritances should materially increase this.

### History of Inheritance Taxes.

"In considering these grave questions, a short history of succession and inheritance taxes may not be inappropriate. Such taxes were recognized by the Roman law. 1 Gibbons, *Decline and Fall of the Roman Empire*, pp. 163, 164. They were adopted in England in 1780, and have been much extended since that date. Dowell, *Hist. Tax'n*, p. 148; Act 20, Geo. III., c. 28; 45 Geo. III., c. 28; 16 & 17 Vict., c. 51; *Green v. Croft*, 2 H. Bl. 30; *Hill v. Atkinson*, 2 Mer. 45. Such taxes are now in force generally in the countries of Europe. Review of Reviews, Feb., 1893. In the United States they were enacted in Pennsylvania in 1826; Maryland, 1844; Delaware, 1869; West Virginia, 1887; and still more recently in Connecticut, New Jersey, Ohio, Maine, Massachusetts, in 1891; Tennessee, in 1891 (chapter 25, now repealed by chapter 174, acts 1893). They were adopted in North Carolina in 1846, but repealed in 1883; were enacted in Virginia in 1844, repealed in 1855, re-enacted in 1863, and repealed in 1884. In New Hampshire, Wisconsin, Minnesota and Vermont, such laws have been passed, but held unconstitutional on various grounds." *Per Wilkes, J.*, in *State v. Alston*, 94 Tenn. 674, 30 S. W. 750, 751, 28 L. R. A. 178.

### List of Statutes.

1891.	Statutes of Tennessee,	c. 25,	s. 6,	extra session.
1893.	"	"	"	c. 89, s. 7.
1893.	"	"	"	c. 174.
1897-1903.	Supplement to Code,	pp. 107-110.		
1899.	Statutes of Tennessee,	c. 213,	p. 457.	
1899.	"	"	"	c. 432, p. 1010.
1901.	"	"	"	c. 128.
1901.	"	"	"	c. 387.
1903.	"	"	"	c. 257.
1903.	"	"	"	c. 341.
1903.	"	"	"	c. 561.
1909.	"	"	"	c. 479, s.

### Constitutional Limitations.

**Tennessee Constitution 1870, a. 2, s. 28.**

. . . All property shall be taxed according to its value, that value to be ascertained in such manner as the legislature shall direct, so that taxes shall be equal and uniform throughout the state. . . .

### THE STATUTE OF 1891.

**Tenn. St. 1891, c. 25. Approved September 21, 1891.**

S. 6. Be it further enacted, That all property which shall pass by will, or by the intestate laws of this state, from any person who may die seized or possessed of the same while a resident of this state, or if such decedent was not a resident of this state at the time of his death, which property, or any part thereof, shall be transferred by deed, grant, sale, or gift, made or intended to take effect in possession or enjoyment after the death of the grantor, or bargainor, to any person or persons, or to any body politic or corporate, in trust or otherwise, or by reason whereof any person or body politic or corporate shall become beneficially entitled, in possession or expectancy, to any property, or the income thereof, other than to or for the use of his or her father, mother, husband, wife, child, brother, sister, the wife or widow of a son, or the husband of a daughter, or any child or children adopted as such in conformity with the laws of the state of Tennessee, by reason whereof any such person or persons or corporation shall become beneficially entitled, in possession or expectancy, to any such property, or to the income, shall be and is subject to a tax of \$5.00 on every \$100.00 of the clear market value of such property, and after the same rate for any less amount, in lieu of all other taxes except *ad valorem*, to be paid to the clerk of the county court for the use of the state, which shall be reported to the state comptroller as other state revenue; and all administrators, guardians, executors and trustees shall be liable for any and all such taxes until the same shall have been paid.

This is the first inheritance law in Tennessee and it was repealed by chapter 174 of the acts of 1893. *Zickler v. Union Bank & Trust Co.*, 104 Tenn. 277, 57 S. W. 341.

## THE INHERITANCE TAX ACT OF 1893.

**Tenn. St. 1893, c. 174.** Approved April 10, 1893.

**S. 1. Taxable Transfers.** Be it enacted by the general assembly of the state of Tennessee, That all estates — real, personal and mixed — of every kind whatsoever, situated within this state, whether the person or persons dying seized thereof be domiciled within or out of this state, passing from any person who may die seized or possessed of such estates, either by will or under the intestate laws of this state, or any part of such estate or estates, or interest therein, transferred by deed, grant, bargain, gift, or sale, made in contemplation of death, or intended to take effect in possession or enjoyment after the death of the grantor or bargainor to any person or persons or to bodies corporate or politic, in trust or otherwise, other than to or for the use of the father, mother, husband, wife, children, and lineal descendants born in lawful wedlock of the person dying seized and possessed thereof, shall be and they are hereby, made subject to a duty or tax of five dollars on every hundred dollars of the clear value of such estate or estates so passing, and at and after the same rate for any less amount, to be paid to the use of the state; and all owners of such estates and all executors and administrators and their sureties shall only be discharged from liability for the amount of such taxes or duties the settlement of which they may be charged with, by having paid the same over for the use of the state as hereinafter directed; Provided, That no estate which may be valued at a less sum than two hundred and fifty dollars shall be subject to this duty or tax; And provided, further, That the term children shall not be construed to apply to adopted children.

*This act is almost identical in terms with the Pennsylvania statute. English v. Crenshaw, 120 Tenn. 531, 110 S. W. 210.*

### Constitutionality.

Tennessee statute of 1893, chapter 174, and chapter 89, section 7, are upheld as not restricting the devolution of property or discriminating between direct descendants and collaterals and as being uniform. The right to tax the succession or inheritance of property is a creature of statute law. "As the right to succeed depends upon the law of the state, it follows that the state may regulate that right as public necessity or policy may dictate, and may subject it to such burdens and reasonable conditions as may best subserve the purposes of the state." *State v. Alston*, 94 Tenn. 674, 30 S. W. 750.

### Nature of Tax.

The succession tax is not a tax upon the property but upon the right or privilege of acquiring it by succession. It is a condition upon which the person may take the estate. "It is a retention by the state of a part of a deceased person's property which the state

may take to meet its necessities and which, in certain cases, it may take *in toto*, as in the cases of escheated property." *Per Wilkes, J.*, in *State v. Alston*, 94 Tenn. 674, 30 S. W. 750, 28 L. R. A. 178.

*The right of any person to succeed to property of a deceased person is a creature of statute law and is not a natural right.* *State v. Alston*, 94 Tenn. 674, 30 S. W. 750, 28 L. R. A. 178.

*The words "clear value" mean the net value after the payment of all debts and expenses of administration and in the cases where the will is contested the expenses for attorney's fees incurred by the executor must be treated as expenses of administration. It is the duty of the executor and clerk of the county court to make an estimate of such fees and expenses and to tentatively allow for them and thus approximate the amount of the tax to be paid, and this amount should be paid subject to revision upon final statement and settlement of account under section 11 of the act. Provision is made for a refund where the executor may have paid too much tax.* *Shelton v. Campbell*, 109 Tenn. 690, 72 S. W. 112.

The clear net value of the estate of a citizen of Tennessee is subject to the tax. Att. Gen. Op. in Tenn. Tax Digest of 1907, p. 93.

*United States bonds* are not exempt from the inheritance tax. Att. Gen. Op. in Tenn. Tax Digest of 1907, p. 93.

*A contest over the will was compromised* by an agreement. The contest against the will was withdrawn and the jury thereupon found in favor of the will. The contest was made by the collateral heirs, and the compromise provided that the widow, who was the sole devisee, should deed one-half of the property devised to the collateral heirs, and this was done. The court holds that the collateral heirs do not derive their title under the will but from the deed of the widow; that they therefore do not take by inheritance, will, deed, grant, gift or otherwise from the testator and hence, under the provisions of the Tennessee statute, no inheritance or succession tax attaches to the property in transfer.

The counsel suggested that by fraud and collusion the state might be entirely defeated of its tax, but the court replies that there is no semblance of proof in the record that this compromise was not made in the utmost good faith and not as a mere subterfuge to evade the payment of the tax. *English v. Crenshaw*, 120 Tenn. 521, 110 S. W. 210. The court relies upon *In re Kerr*, 159 Pa. St. 512, 28 A. 354, and upon *In re Hawley*, 214 Pa. St. 525, 63 A. 1021, construing a Pennsylvania statute almost identical with that in Tennessee.

**"To any Person."**

The intestate died a citizen of Kentucky having personal property in Tennessee. Under the laws of Kentucky his mother was the sole distributee, while under the laws of Tennessee his brother would take one-half of the estate. Under Tenn. St. 1893, c. 174, s. 1, this property is not subject to tax, as it is settled that if one dies domiciled in a foreign state leaving personal property in this state the laws of the domicile of the deceased will determine who are entitled to the surplus after the payment of debts. As under the law of Kentucky which governs the succession the property goes to the mother and not to any collateral kindred, the statute does not apply. *Fidelity & Deposit Co. v. Crenshaw*, 120 Tenn. 606, 110 S. W. 1017.

**Deduction of Debts.**

Where a non-resident testator dies leaving stock in a Tennessee corporation and indebtedness due creditors in the state of Tennessee, the Tennessee indebtedness cannot be deducted from the valuation of the Tennessee property unless the executor can show that the debts due Tennessee creditors were discharged with Tennessee assets. The court infers that the individual indebtedness to the Tennessee creditor was paid with Mississippi assets, since the appraiser found that the entire value of the estate in Tennessee was \$34,000, and that amount still remained intact for distribution when the appraisal was made. *Memphis Trust Co. v. Speed*, 114 Tenn. 677, 88 S. W. 321.

**Partnership Debt.**

Where a testator died owing debts in Tennessee and also having liabilities as a member of a partnership, the court has no concern in the matter of the amount of the tax with the partnership debt since that was discharged with firm assets. *Memphis Trust Co. v. Speed*, 114 Tenn. 677, 88 S. W. 321.

**Practice on Exemptions.**

In *English v. Crenshaw*, 120 Tenn. 531, 110 S. W. 210, the question of an exemption under the inheritance tax law came up by a suit by the county court clerk against the administrator for the purpose of recovering the tax in the circuit court.

The proceeds of a life insurance policy, payable to the executors of the insured and passing upon his death to his brothers and sisters, are subject to the tax. Att. Gen. Op.



**Effect of Election by Non-resident Beneficiary.**

Section 1 provides that executors are only discharged from liability by payment of the taxes. Section 10 provides that the tax shall be paid on transfer.

The testator died living in Missouri and owning stock in a Tennessee corporation and the will gave the testator's wife one-half of the residue. The widow elected under this provision of the will to take the stock in the Tennessee corporation and the court holds that the executor had a right upon the election of the widow to transfer to her the stock in the Tennessee corporation in payment of her one-half interest, provided, of course, it was taken at a fair valuation as compared with the balance of the residuary estate wherever situated, and therefore no tax accrued. It was argued that under this residuary clause, which in terms did not confer any right of election, the wife had no right to make a selection of specific property left in the residuary estate. The court relies upon the *Matter of James*, 144 N. Y. 6, 38 N. E. 961, where the whole matter was discussed. *Memphis Trust Co. v. Speed*, 114 Tenn. 677, 88 S. W. 321.

**S. 2. Bequest to Executors.** Where a testator names or appoints one or more executors, and makes a bequest or devise of property to them in lieu of their commissions or allowance, or appoints them his residuary legatees, and said bequests, devises, or residuary legacies exceed what would be a fair compensation for their services, such excess shall be subject to the payment of the collateral inheritance tax or duty, the rate of compensation to be fixed by the proper officers or courts having jurisdiction in the case.

**S. 3. When tax on remainders accrues.** Be it enacted, That in all cases where there shall be a devise, bequest, or descent of an estate, real or personal, to collateral relatives or strangers, liable to the collateral inheritance and succession tax, to take effect in possession or to come into actual enjoyment after the expiration of one or more life estates, or a period of years, the tax on such estate shall not be payable, nor interest begin to run thereon, until the person or persons liable for the same shall come into actual possession of such estate by the termination of the estates for life or years; and the tax shall be assessed upon the value of the estate at the time the right of possession accrues to the owner as aforesaid; provided, That the owner shall have the right to pay the tax any time prior to his coming into possession; and in such cases the tax shall be assessed on the value of the estate at the time of the payment of the tax, after deducting the value of the life estate or estates for years; And provided further, That the tax on all real estate shall be and remain a lien on the real estate on which the same is chargeable until paid. And the owner of any personal estate subject to the tax provided by this act shall make a full report and return of the same to the clerk of the county court of the proper county within

one year from the death of the decedent, and within that time enter into security for the payment of the tax to the satisfaction of such clerk; and in case of failure so to do, the tax shall be immediately payable and collectible.

*The tax bears interest* from the date when it is payable, one year from the death of the decedent, notwithstanding the pendency of litigation, the scarcity of funds and other causes. *Shelton v. Campbell*, 109 Tenn. 690, 72 S. W. 112.

**“Until the Person or Persons Liable for the Same shall Come into Actual Possession of Such Estate.”**

The tax on the remainder after the life tenancy does not mature until the death of the life tenant; and the tax on the second remainder after the death of the second life tenant does not mature until the death of the second life tenant. *Bailey v. Drane*, 96 Tenn. (12 Pickle) 16, 33 S. W. 573.

This section does not contemplate that persons holding contingent interests shall make the report and give security within the year from the death of the decedent. *Harrison v. Johnston*, 109 Tenn. 245, 70 S. W. 414.

*Merger of Life Estate.* Tenn. St. 1893, c. 174, s. 3, provides a collateral inheritance tax on certain remainders. Two remaindermen after a life interest to the wife of the testator conveyed their interests to the wife, but the court holds that a conveyance by these two parties does not withdraw the estate from the operation of the inheritance tax law and defeat its collection. It was claimed that by the conveyance the estate of the wife became merged into a fee and that therefore there was nothing left for the remainders. The only question remaining is whether, in view of the transfer made, the period for the collection of the tax has been accelerated so as to make it collectible at once, and if so, from whom shall it be collected and upon what basis.

The statute provides that the remainder is taxable only when it comes into possession and beneficial enjoyment. The court concludes that when the life tenant became the owner of the remainder interests in the property, being already the life tenant, the two estates thereby merged into one and the remainder vested in possession to all intents and purposes and for all beneficial uses, and she might at once dispose of the whole estate in fee. She became thus entitled to the possession as fee simple owner of the estate and to the beneficial use of it as a whole and, by virtue of these transactions, a tax upon the remainder interest became at

once payable upon an assessment at its value at that time. The state, as the effect of the transactions between the parties, became at once entitled to an inheritance tax upon the full value of the remainder interest as fixed by the appraisement.

The court was divided on the question as to who should pay the tax. The majority is of opinion that the whole of it should be paid by the life tenant on the ground that the life tenancy and remainder by virtue of these transfers became vested in the same person, and there was a merger of the two estates into one fee simple estate in her, and that she is taxable upon the value of the remainder which entered into the merger. *Harrison v. Johnston*, 109 Tenn. 245, 70 S. W. 414, 417.

**S. 4. Interest. — Discount.** Be it further enacted, That if the collateral inheritance tax shall be paid within three months after the death of the decedent, a discount of five per centum on the amount of the tax shall be made and allowed; and, if said tax is not paid at the end of one year from the death of the decedent, at which time it shall be due, interest shall then be charged at the rate of six per centum per annum on such tax.

*The fact that proceedings are pending to test the validity of the will cannot postpone the maturity of the tax when it appears that in either event, testacy or intestacy, the tax will be payable at the same rate, as in the present case, and interest is chargeable from one year after the testator's death.* *Shelton v. Campbell*, 109 Tenn. 690, 72 S. W. 112.

**S. 5. Tax to be deducted.** Be it further enacted, That the executor or administrator or other trustee paying any legacy or share in the distribution of any estate subject to the collateral inheritance tax, as provided by this act, shall deduct therefrom at the rate of five dollars in every hundred dollars upon the whole legacy or sum paid; or, if not money, he shall demand payment of a sum to be computed at the same rate upon the appraised value thereof, for the use of the state; and no executor or administrator shall be compelled to pay or deliver any specific legacy or article to be distributed, subject to tax, except on the payment into his hands of a sum computed on its value, as aforesaid; and, in case of neglect or refusal on the part of said legatee or distributee to pay the same, such specific legacy or article, or so much thereof as shall be necessary, shall be sold by such executor or administrator at public sale for cash, after notice to such legatee or distributee, and after ten days' advertisement, as in case of ordinary administrator's sales; and the balance that may be left in the hands of the executor or administrator, after reserving the tax, shall be distributed to the legatee or distributee as is or may be directed by law; and every sum of money retained by any executor or administrator, or paid into his hands on account of any legacy or distributive share, for the use of the state, shall be paid by him without delay to the county court clerk of the county in which his accounts are being administered.

**S. 6. Conditional estates.** If the legacy subject to the collateral inheritance tax be given to any person for life or for a term of years, or for any other limited period, upon a condition or contingency, if the same be money, the tax thereon shall be retained upon the whole amount; but, if not money, application shall be made to the county court having jurisdiction of the accounts of the executors or administrators to make apportionment, if the case requires it, of the sum to be paid by such legatees, and for such further order relative thereto as equity shall require. Such application shall be made by the executor of such estate after at least five days' notice to the parties concerned.

This section relates only to legacies having each of two peculiarities, to legacies which are for life, for years or for some other limited period of time, and which are also dependent "upon a condition or contingency." *Bailey v. Drane*, 96 Tenn. (12 Pickle) 16, 33 S. W. 573.

**S. 7. Legacy charged on real estate.** Wherever a legacy subject to the tax or duty hereby provided, shall be charged upon or payable out of real estate, the heir or devisee, before paying the same, shall deduct therefrom at the rate aforesaid, and pay the amount so deducted to the executor, and the same shall remain a charge and lien upon such real estate until paid, and the payment thereof shall be enforced by decree of the county court in the same manner that liens on real estate are now enforced in the chancery courts of this state, and the clerk of the county court officially shall be the complainant in such suit.

**S. 8. Information as to real estate.** Whenever any real estate of which any decedent may die seized shall be subject to the collateral inheritance tax, it shall be the duty of executors and administrators to give information thereof to the clerk of the county court where administration has been granted within six months after they undertake the execution of their respective duties, or, if the fact be not known to them within that period, within one month after the same shall have come to their knowledge; and it shall be the duty of the owner of such estate immediately upon the vesting of the estate, to give information thereof to such clerk of the court having jurisdiction of the granting of administration.

**S. 9. Payment. — Receipts.** It shall be the duty of any executor or administrator receiving or collecting collateral inheritance tax, to pay the same to the clerk of the county court granting the administration, and where his accounts should be administered, and to take duplicate receipts from such clerk for the same, one of which shall be forwarded forthwith to the comptroller of the treasury, whose duty it shall be to charge the clerk receiving the money, with the amount, and countersign the receipt and return it to the executor or administrator, whereupon it shall be a proper voucher in the settlement of the estate; but in no event shall an executor or administrator be entitled to a credit in the settlement of his accounts with the county court clerk, or in the chancery court, if his accounts be there settled, unless the receipt is so countersigned by the comptroller.

**S. 10. Payment on transfer.** Be it further enacted, That whenever any foreign executor or administrator or trustee, shall assign or transfer any stocks or loans in this state standing in the name of the decedent or in trust for a decedent which shall be liable for the collateral inheritance tax, such tax shall be paid, on the transfer thereof, to the clerk of the county court where such transfer is made, otherwise the corporation or person permitting such transfer shall become liable to pay such tax.

**S. 11. Refund to pay debts.** Whenever debts shall be proven against the estate of a decedent after distribution of shares or legacies from which the collateral inheritance tax has been deducted, in compliance with this act, and the legatee or distributee is required to refund any portion of a legacy or share, a corresponding portion of said tax shall be repaid to him by the executor or administrator if the said tax has not been paid to the clerk, and if it has been so paid to the clerk, then it shall be repaid out of the state treasury upon the comptroller's warrant, to be drawn by him in favor of the person entitled thereto, upon the county clerk certifying, under his seal of office, that the same is justly due, on account of the provisions of this section of this act.

**S. 12. Appraiser.** It shall be the duty of the clerk of the county court in which letters testamentary or of administration are granted to appoint an appraiser as often as and whenever occasion may require, to fix the valuation of estates which are or shall be subject to collateral inheritance tax; and it shall be the duty of such appraiser to make a fair and conscionable appraisement of such estates; and it shall further be the duty of such appraiser to assess and fix the cash value of all annuities and life estate growing out of said estates, upon which annuities and life estates, the collateral inheritance tax shall be immediately payable, out of the estate, at the rate of such valuation, but shall bear no interest till the lapse of twelve months from the death of the decedent; and in fixing the value of such annuities and life estate the computation shall be made by the Carlyle Life Tables, whenever the use of life tables is necessary or applicable. Said appraisements shall be reduced to writing, in the nature of a report, and shall be by the appraiser filed with the clerk appointing him; *Provided*, That any interested person not satisfied with said appraisement shall have the right, at any time within thirty days after such appraisement is filed with the clerk, to file exceptions thereto, in writing, on giving security to pay all costs, together with whatever tax shall be fixed by the county court, and thereupon to have the county court to hear said exceptions; and upon such exceptions being filed, the county court shall have jurisdiction to determine all questions of valuation and of the liability of the appraised estate for such tax, subject to the right of appeal to the circuit court (or court of like jurisdiction), as in other cases. If an appeal should be prosecuted to the circuit court, such cause shall there be heard *de novo*.

**S. 13. Appraisers to accept no fees from parties.** It shall be a misdemeanor in any appraiser appointed by the county clerk to make any appraisement in behalf of the state, to take any fee or reward from any executor, administrator, legatee, next of kin, or heir of any decedent; and for any such offense the clerk shall dismiss him from such service, and, upon conviction he shall be fined not exceeding five hundred dollars and imprisoned in the county

jail not exceeding one year, one or both; and the court shall have the power to assess the imprisonment if the jury does not do so, as well as a fine, within the limit of the power of the court.

**S. 14. Records.** Be it further enacted, That it shall be the duty of the county court clerks to enter in a book to be provided at the expense of the state, to be kept for that purpose and which shall be a public record, the returns made by all appraisers under this act, opening an account in favor of the state against the decedent's estate, and the county court clerk may give certificate of payment of such tax from said record; and it shall be the duty of said clerk to transmit to the comptroller, on the first day of each month, a statement of all reports or returns made by appraisers during the preceding month, which statement shall be entered by the comptroller in a book to be kept by him for that purpose; and whenever any such tax on real estate shall have remained due and unpaid for one year, it shall be the duty of the county clerk, in his official name as clerk, to apply to the county court, by bill or petition, to enforce the payment of the same, whereupon, after process is duly served or notice duly given to the owner of the real estate charged with the tax and to such other persons as may be interested, after the manner of the practice of the chancery courts, the county court shall proceed, according to equity, to make such decrees and orders for the enforcement of the lien and the payment of said tax out of such real estate as shall be just and proper, the county court being hereby invested with jurisdiction for said purposes; and any sales of real estate made hereunder shall be made on a credit of not less than six nor more than twenty-four months, barring the right of redemption as in chancery sales. If no one bids an amount at such sales sufficient to cover the taxes due and costs, the clerk of the county court, by himself or agent, shall bid the land in for the state, bidding an amount deemed sufficient to cover said taxes due and costs, and in this event, upon confirmation of the report of sale, a writ of possession may be issued to place the state or its agents in possession of such real estate, and so as to any other purchaser. If the state so become the purchaser of real estate, the cost of the cause shall be paid by the state, the comptroller drawing his warrant therefor in favor of such clerk upon the clerk certifying such cost bill to the comptroller; Provided, however, That if said clerk knows of any good and sufficient reason why the payment of such tax has been delayed, he shall not be compelled to file such bill immediately upon said tax becoming due, but may, in his discretion, postpone the bringing of such suit to such time as he deems proper, within the limits of this act; Provided further, That if the court adjudges such tax to be due and a charge upon the real estate, it shall tax up, as a part of the costs a reasonable attorney's fee for the clerk's solicitor or attorney in the case, to be collected out of the land as the said tax and other costs. Appeals from final decrees in suits under this section shall lie to the circuit court, where an additional attorney's fee for services in that court shall be taxed up as costs (if the said tax be found due and a lien on the land) in favor of the attorney general of the circuit, who shall attend to such suits in the circuit court, such fee to be fixed by the court. In the trial of suits under this section in the county court, the proof may be heard orally or by deposition, but on appeal the cause shall be heard on the record brought up.

Tenn. St. 1893, c. 174, ss. 14-16, provides that the county court clerk may employ an attorney whose reasonable fee shall be taxed

up as costs, and the court holds that such costs allowed a district attorney should be turned into the state treasury, as he can receive no compensation apart from this salary under Tenn. St. 1897, c. 41. *Harrison v. Johnston*, 109 Tenn. 245, 70 S. W. 414.

**S. 15. Proceedings for collection.** Be it further enacted, That if the clerk of the county court shall discover that any collateral inheritance tax has not been paid over according to law, he shall cause notice to be served upon the executors, administrators, legatees, or distributees, as the case may be, of the decedent whose estate is subject to the tax, notifying them to appear before the county court on a certain day, which need not be the first day of the term, and show cause why the said tax should not be paid; and, when personal service cannot be had, notice shall be given for four weeks, once a week, in a newspaper published or circulating in the county, and the matter shall be heard by said court, on written or oral testimony; and, if the tax should be found due and unpaid, the said delinquent shall pay the tax and cost, and the said court shall enter such judgment and orders to this end as may be needful to enforce the collection of the tax and costs. Such notice shall be served at least five days before the time set therein for appearance, and, if by publication, the last publication shall be at least five days before the time of appearance, or the clerk may enforce the collection of such delinquent tax by bill filed in his name as clerk, in the county court, to be proceeded with after the manner of chancery suits, and if he so proceeds by bill, he may obtain writs of attachment against the property of the delinquents, if there be grounds for attachments, as now provided by law, or writs of injunction, if there be grounds for the same; and the county courts are invested with full jurisdiction to hear and determine such suits as if a court of equity for this purpose. But in such cases the testimony before the county court may be either oral or in writing. From final judgments, decrees, or orders in the county courts in suits or proceedings provided by this section, appeals shall lie to the circuit court, in which court the cause shall be heard *de novo*, if commenced by notice in the county court; but, if commenced by bill, it shall be heard only upon the record; provided, however, That if the delinquent be the appellant he shall give bond upon appeal, not only for the costs, but also to pay the tax due if he is cast in the suit. In said appeals the attorney general of the circuit shall attend to the suits for the clerk or state in the circuit court; and his fee and that of the clerk's attorneys in the county court, if the delinquent held liable, shall be taxed up as costs by the respective courts substantially as provided in section fourteen of this act.

The chancery court in Tennessee has jurisdiction of a suit to recover an inheritance tax if there is no demurrer although the county court has primary jurisdiction. *Fidelity & Deposit Co. v. Crenshaw*, 120 Tenn. 606, 110 S. W. 1017.

**S. 16. Fees for collection.** Be it further enacted, That the clerks of the county courts of the several counties of the state shall be the agents of the state for the collection of the collateral inheritance and succession tax, or duty provided for by this act, and for their services rendered in collecting and paying over

the same, they shall be allowed to retain five per centum on all such taxes paid over and accounted for; and it shall be the duty of said clerks, whenever necessary, to employ an attorney to aid them in collecting, by suits, the said collateral inheritance tax, the fees of such attorneys to be taxed up by the court as costs against the delinquent, if he shall be held liable, such fees to be reasonable. Any such suits are, on the one side, to run in the official name of the clerk, and may be reviewed in the name of his successor in office; but he is not required to give any bonds for costs in bringing suits, or on appeals; and if suits are decided against him, judgment shall be given against the state for costs, and the state shall pay the same, unless the court should be of the opinion that the suit brought, or the appeal prosecuted by the said clerk, was malicious or frivolous, in which event the court shall tax the cost against the clerk individually; and when the costs, expenses, and attorneys' fees cannot be collected out of the delinquent, when adjudged against him, or when the costs are adjudged against the state, the comptroller is authorized and empowered, in settlement of accounts of such clerks, to allow him to retain such costs and reasonable attorneys' fees incurred in the collection of such taxes. The fact that the clerk is a party to such suits, shall not render him incompetent to issue writs, subpoenas, notices, etc., in such suits, and for the same he shall be entitled to receive the same fees now allowed by law for such services, and also the usual fees for making our transcripts on appeals.

The Tenn. St. 1893, c. 174, makes it the duty of the county clerk to collect the taxes and provides that he may employ an attorney whose fee shall be taxed as costs. Where the county clerk employed the state revenue agent to sue for the tax, action was brought in the chancery court and tried there without objection, this agent was entitled in his capacity as attorney to a fee of five per cent of the tax, which was in addition to his salary as revenue agent. *Shelton v. Campbell*, 109 Tenn. 690, 72 S. W. 112.

The fact that the original suit for the settlement of an estate is still pending in the chancery court, and the statute provides that the inheritance tax may be collected in such cases in such suits, does not prevent jurisdiction by the county court under section 22 of the Tenn. St. 1893, c. 174. *Harrison v. Johnston*, 109 Tenn. 245. 70 S. W. 414.

**S. 17. Clerks to give bonds.** The clerks of the several county courts of the state shall, within sixty days after the passage of this act, enter into bonds before their respective county courts, payable to the state, with two or more sufficient sureties, to be approved by the said courts, for the faithful performance of the duties imposed by this act, and for the regular accounting and paying over of the amount to be collected hereunder and said bonds, when executed and approved, to be forwarded to the comptroller, and filed in his office. Such bonds in counties of thirty thousand inhabitants and over, by the federal census of 1890, shall be in the penal sum of two thousand five hundred dollars; *Provided, however*, That when any clerk of the county court is, after the passage of this



act, inducted into office, the bond now required by law to be given by him to account for all revenues collected by him for the state shall cover and be liable for the taxes received and collected by him by virtue of this act; and if that bond be executed and approved, no other or special bond need be given by him to account for revenues collected hereunder. No clerk holding office at the date of the passage of this act, shall receive or collect the taxes provided for herein, until he has entered into the bond provided for by this section.

**S. 18. Returns.** It shall be the duty of the clerk of the county court to make return and payment to the treasurer of the state, in the usual method, of all the collateral inheritance taxes he shall have received for the previous quarter, stating for what estates paid, on the first day of April, July, October, and January in each year; and for all such taxes collected by him and not paid over within one month after his quarterly returns of the same is or should be made, he shall pay interest by way of penalty, at the rate of twelve per centum per annum until paid.

**S. 19. Lien. — Limitations.** The lien of the collateral inheritance tax shall continue until the tax is settled and satisfied; *Provided*, That the said lien shall be limited to the property chargeable therewith; *And provided further*, That all collateral inheritance tax shall be sued for within five years after they are due and legally demandable, otherwise they shall be presumed to have been paid, and cease to be a lien as against any purchasers of real estate.

**S. 20. Attorney general to prosecute.** In suits arising under this act which may be carried to the supreme court, the attorney general of the state shall represent the clerk of the county court and the state in that court.

**S. 21. Bonds.** The bonds of all executors and administrators qualifying after the passage of this act, and which are now required to be given by law, shall be liable for the faithful discharge by them of all duties imposed upon them by this act, including the faithful paying over by them of all collateral inheritance taxes that may come to their hands; and any trustee whose duties are similar to those of an executor, or who has the dividing or disposing of an estate of a decedent, is included in this act under the term executor.

**S. 22. Tax to be paid before estate settled.** In all cases where an estate is being wound up or administered in a chancery court, it shall be the duty of that court to see that the collateral inheritance tax is paid to the clerk of the county court, if such estate be liable for such tax, and to see that such tax is paid or retained before a legacy or share or an estate is paid or turned over to the owner; and if any such tax is received by the clerk and master, it shall be ordered paid by him to the county court clerk; and upon such payment being made by a clerk and master he shall take duplicate receipts from the county court clerk and transmit one of them to the comptroller, who shall countersign it and return it, and it shall only be a good voucher to the clerk and master upon its being so countersigned.

**S. 23. Appraisers' duties.** The appraiser provided for by this act shall be sworn by the county court clerk to faithfully and impartially perform his duty,

and to make due returns, in writing, of his action in the premises, with a written statement appended of the length of time spent by him in appraising the particular property, and the necessary expense, by items, incurred by him traveling to and from the property, if there be such expense; and for his services the appraiser shall receive two dollars per day for the time necessarily spent in such service, and his actual traveling expenses in addition, to be paid him by said clerk out of any collateral inheritance tax coming to his hands, and for which the clerk shall receive credit; *Provided*, Said clerk shall have the right to audit any such cost bill of an appraiser, and to reduce the amount of the same if satisfied it is incorrect, and it shall be his duty to do so.

**S. 24. Not retroactive.** This act shall only apply to the estates of persons dying after its passage, and not to the estate of any person dying prior to its passage.

**S. 25. Repeal.** Be it further enacted, That section 6 of chapter 25 of the acts of the extraordinary session of 1891, providing for an inheritance and succession tax in certain cases, and all other acts in conflict with this act, be, and the same are hereby, repealed. And it is provided that when any tax may have been collected, but not paid into the state treasury under said section hereby specially repealed, the same shall be refunded to the parties from whom collected, to be used and disposed of as if said section had not been enacted.

## THE REVENUE STATUTES.

**Tenn. St. 1893, c. 89, s. 7.** Approved April 10, 1893.

**S. 7.** Be it further enacted, That all property which shall pass by will or by intestate laws of this state from any person who may die seized or possessed of the same while a resident of this state, or if such decedent was not a resident of this state at the time of his death, which property, or any part thereof, shall be transferred by deed, grant, sale, or gift, made or intended to take effect, in possession of enjoyment, after the death of the grantor or bargainor, to any person or person or to any body politic or corporate, in trust or otherwise, or by reason whereof any person or body politic or corporate shall become beneficially entitled, in possession or expectancy, to any property, or the income thereof, other than to or for the use of his or her father, mother, husband, wife, child, grandchild, brother, sister, the wife or widow of a son, or husband of a daughter, or any child or children adopted as such in conformity with the laws of the state of Tennessee, by reason whereof any such person or persons or corporation shall become beneficially entitled, in possession or expectancy, to any such property or to the income, shall be and is subject to a tax of \$5 on every \$100 on the clear market value of such property, and after the same rate for any less amount, in lieu of all other taxes, except *ad valorem*, to be paid to the clerk of the county court for the use of the state, which shall be reported to the state comptroller, as other state revenue; and all administrators, guardians, executors, and trustees shall be liable for any and all such taxes until the same shall have been paid.

## Validity of Classification by Relationship.

A distinction between direct descendants and collateral kindred and strangers has abundant reason upon which to sustain it, for

the moral claim of collaterals and strangers is less than of kindred in direct line and the privilege is therefore greater. Tenn. St. 1893, c. 89, s. 7, is not unconstitutional because it discriminates between direct descendants and collateral kindred and strangers. *State v. Alston*, 94 Tenn. 674, 30 S. W. 750, 28 L. R. A. 178; *Bailey v. Drane*, 96 Tenn. 16; *Debardelaben v. State*, 99 Tenn. 649, 42 S. W. 684; *State v. Brewing Co.*, 20 Pickle 732, 737.

### **Validity of Exemptions.**

The exemption of estates under \$250 in value is not unconstitutional as it is within the province of the legislature to declare what privileges shall be taxed and what exemptions may be allowed; and the exemption of small estates is neither arbitrary nor devoid of reason inasmuch as the expenses of administration are proportionally much greater in small than in larger estates. In this case an estate worth \$249 escapes taxation, but one of \$250 or over is subject to tax. *State v. Alston*, 94 Tenn. 674, 30 S. W. 750, 28 L. R. A. 178.

### **Remainders.**

Under Tenn. St. 1893, c. 89, and c. 174, a remainder to collateral kindred whose property or estates are declared to be liable for taxes is subject to taxes although the prior estate is exempt. Each recipient must stand upon his or her own relationship to the person from whom the property comes without reference to the liability or non-liability of the person taking the property before or after him. *Bailey v. Drane*, 96 Tenn. (12 Pickle) 16, 33 S. W. 573.

### **Revenue Statute Prevails.**

Tenn. St. 1893, c. 174, includes all estates passing in certain enumerated modes except those expressly excluded. Estates passing to brothers of the decedent are not excluded; hence they are included. However, the Tenn. St. 1893, c. 89, is shown by the journals of the house and senate to have been approved and taken effect at a later hour of the same day, April 10, 1893, and expressly excepts estates received by the brothers and sisters of a decedent from liability for the tax. This provision being subsequent in point of time is the prevailing law and controlling. *Bailey v. Drane*, 96 Tenn. (12 Pickle) 16, 33 S. W. 573.

**Not Repealed by Revenue Law.**

This act is a special law in the sense and meaning that it is intended to apply only to the subject of a collateral inheritance tax and no other species or subject of taxation; and being so, it is not repealed by the general revenue statute of 1895, but is revived by it. *Zickler v. Union Bank & Trust Co.*, 104 Tenn. 277, 57 S. W. 341, 344.

**Effect of Repeal of Revenue Law.**

The fact that the general revenue law of 1895 repealed by implication the general revenue law of 1893, c. 89, s. 7, as to collateral inheritances, did not render inoperative the statute of 1893, c. 174, but on the contrary revived it. *Zickler v. Union Bank & Trust Co.*, 104 Tenn. 277, 57 S. W. 341.

The revenue acts have provided that an inheritance tax shall be collected as provided in St. 1893, c. 174, "and acts amendatory thereof," except that the words "and acts amendatory thereof" were omitted from the act of 1899. See St. 1899, c. 432, s. 1; St. 1901, c. 128, s. 1; St. 1903, c. 257, s. 1; St. 1907, c. 541, s. 1; St. 1909, c. 593, s. 1.

**Effect of Revenue Acts.**

Tenn. St. 1893, c. 174, is a complete system of taxation on the subject of inheritance taxes and s. 25 expressly repeals the statute of 1891. On the same day the legislature passed a general revenue law, Tenn. St. 1893, c. 89, s. 7, imposing a collateral inheritance tax copied almost literally from the statute of 1891, except that the word "grandfather" is added to the exception in section 7 of the inheritance act of 1893. In the general revenue acts of 1895 and 1897 no mention was made of a collateral inheritance tax and the contention was made, therefore, that the general revenue act of 1895 repealed all the provisions of the general revenue act of 1893, c. 89, s. 7.

It has become in Tennessee a legislative custom to re-draft and re-enact a new general revenue law at each session of the legislature instead of amending the old law embracing generally the entire subject of privilege taxation; so the general revenue law of 1895 is a general law upon the subject of privilege taxation on certain occupations, and it was intended to take the place of the general revenue law of 1893; and whatever was omitted in the new law was intended to be discarded. This implied repeal of the revenue act of 1893 revives chapter 174 of the statutes of 1893. *Zickler v. Union Bank & Trust Co.*, 104 Tenn. 277, 57 S. W. 341.

## AMENDMENTS.

Tenn. St. 1899, c. 213, p. 457, amends Tenn. St. Shannon's Compiled Statutes, s. 4025, by adding thereto the words "and if there be no widow or next of kin then such right of action shall survive to his personal representative, for the benefit of his estate, to pay his debts, burial expenses, and the expenses of administration."

Tenn. St. 1899, c. 432, p. 1010, s. 1, provides that there shall be levied and collected a collateral inheritance tax as provided for in the statute of 1893, c. 174.

Tenn. St. 1901, c. 128, s. 1, provides that there shall be levied and collected a collateral inheritance tax as provided for in the statute of 1893, c. 174, and acts amendatory thereof.

Tenn. St. 1901, c. 387, was a special act refunding to a certain administrator a tax paid on a legacy from a deceased person who died in November, 1893, when no inheritance tax was collectible in property inherited by brothers and sisters.

Tenn. St. 1903, c. 257, s. 1, provides that there shall be levied and collected a collateral inheritance tax as provided for in the Tenn. St. 1893, c. 174, and acts amendatory thereof.

### Charities Exempt.

Tenn. St. 1903, c. 341, approved April 15, 1903, amends the statute of 1893, c. 174, by adding to section 1 of the act the following: — Provided, that in all cases where suits have been instituted for the collection of the collateral inheritance tax, the institution or institutions relieved of said taxes by this act shall pay the costs which would have been a part of the judgment of the court trying the case, if this act had not been passed, and provided further, that nothing in this act shall be so construed as to interfere with the judgments of courts already rendered with regard to cost, the purpose of this act being to exempt the institutions above referred to from the tax proper, and not from the cost already incurred by the state in attempting to collect said taxes.

Tenn. St. 1903, c. 561, amends Tenn. St. 1893, c. 174, s. 1: —

Be it enacted by the general assembly of the state of Tennessee, That all estates, real, personal and mixed of every kind whatsoever, situated in this state, passing from any person who may die seized or possessed of such estates either by will, deed, grant, bargain, gift or sale made in contemplation of death, or intended to take effect in possession or enjoyment after death of the testator, grantor or bargainor, to any religious, charitable, scientific, literary or educational institution, be and the same are hereby exempted from the collateral inheritance tax now imposed by chapter 174 of the act of 1893, and all subsequent laws and all bequests and devises to any such institutions upon which collateral inheritance tax has not yet been paid, are hereby released from said tax and such institutions.

Tenn. St. 1903, c. 561, s. 2. Be it further enacted, that all laws upon the subject of collateral inheritance tax including the revenue and assessment bills to be passed at the present session of the legislature in so far as they conflict with this act be and the same are hereby repealed and this act take effect from and after its passage, the public welfare requiring it.

## THE DIRECT INHERITANCE ACT OF 1909.

**Tenn. St. 1909, c. 479.** Approved May 1, 1909.

S. 20. Be it further enacted, That inheritances not taxed under the present laws shall pay a tax as follows: —

All inheritances of \$5,000 and over, but less than \$20,000, a tax of one per centum of their value.

All inheritances of \$20,000 and over, a tax of one and one-fourth per centum of their value, to be collected by the county court clerk of each county.

### “Inheritances.”

It was claimed that the word “inheritances” is to be limited to cases of intestacy. The court observes that if this were so the statute might be void as class legislation; and that the revenue statutes should receive a “fair construction to effect the end for which they were intended.” A succession tax is not a burden imposed upon property, but is a privilege tax upon the right of taking from another.

The court notes that the civil law definition of the word “inheritances” is “the succession to all rights of the deceased,” and is of two kinds, by will and by the operation of law.

The court concludes that it is inconceivable that the legislature intended by the term “inheritance” to confine this tax to those taking as heirs or next of kin. *Knox v. Emerson* (Tenn. 1910), 131 S. W. 972.

### Proceedings.

The court notices that no specific mode is designated for the collection of the tax as the court says that the legislature properly assumed that the collection had been covered elsewhere.

The statute of 1893, c. 174, embraced within itself a complete system of taxation; under section 15 the duty and method of collecting the tax is provided, and this remedy is properly applied under the statute of 1909. In a proceeding under the Tennessee statute of 1909, which is but a supplement of the statute of 1893, the attorney of the county court clerk is entitled to a fee to be paid by the taxpayer. *Knox v. Emerson*, Tenn. (1910), 131 S. W. 972.

## THE PRESENT ACT.

The inheritance taxes have never been codified. The existing law is the inheritance tax act of 1893 with the amendments noted above.

## TEXAS.

### In General.

Texas adopted a collateral inheritance tax in 1907. Inheritances to father, mother, husband, wife and lineal descendant are exempt. The exemption applies to each individual share, not to the estate as a whole.

Texas is not now claiming a tax on stock of a Texas corporation owned by a non-resident, and there is no provision for collecting such a tax through the corporation, such as is usually found. The language of the statute, however, does not differ materially from that of many of the states that claim such a tax.

### Constitutional Limitations.

**Texas Constitution, 1876, a. 8, s. 1.**

Taxation shall be equal and uniform. All property in this state, whether owned by natural persons or corporations, other than municipal, shall be taxed in proportion to its value, which shall be ascertained as may be provided by law. . . .

### THE PRESENT ACT.

**Texas St. 1907, c. 21, p. 496. Approved May 16, 1907.**

**AN ACT TO TAX PROPERTY PASSING BY WILL OR BY DESCENT OR BY GRANT OR GIFT; taking effect on the death of the grantor or donor.**

**S. 1. Taxable transfers.** All property within the jurisdiction of this state, real or personal, corporeal or incorporeal, and any interest therein, whether belonging to inhabitants of this state or not, which shall pass, absolutely or in trust, by will, or by the laws of descent of this or any other state, or by deed, grant, sale or gift, made or intended to take effect in possession or enjoyment after the death of the grantor or donor, shall upon passing to or for the use of any person except the father, mother, husband, wife or direct lineal descendants of the testator, intestate, grantor or donor, or any public corporation or charitable, educational or religious organization within this state when such bequest, gift or devise is to be used for charitable, educational or religious purposes within this state, be subject to a tax for the benefit of the state, as follows: —

(1) If passing to or for the use of a lineal ascendant or a brother or sister, or a lineal descendant of a brother or sister, the tax shall be two per cent on any value in excess of two thousand dollars, and not exceeding ten thousand dollars; two and one-half per cent of any value in excess of ten thousand dollars, and not exceeding twenty-five thousand dollars; three per cent on any value in excess of twenty-five thousand dollars, and not exceeding fifty thousand dollars; three

and one-half per cent on any value in excess of fifty thousand dollars, and not exceeding one hundred thousand dollars; four per cent on any value in excess of one hundred thousand dollars, and not exceeding five hundred thousand dollars; and five per cent on any value in excess of five hundred thousand dollars.

(2) If passing to or for use of an uncle or aunt, or a lineal descendant of an uncle or aunt of the decedent, the tax shall be three per cent on any value in excess of one thousand dollars, and not exceeding ten thousand dollars; four per cent on any value in excess of ten thousand dollars, and not exceeding twenty-five thousand dollars; five per cent on any value in excess of twenty-five thousand dollars, and not exceeding fifty thousand dollars; six per cent on any value in excess of fifty thousand dollars and not exceeding one hundred thousand dollars; seven per cent on any value in excess of one hundred thousand dollars, and not exceeding five hundred thousand dollars, and eight per cent on any value in excess of five hundred thousand dollars.

(3) If passing to or for the use of any other person, natural or artificial, the tax shall be four per cent of any value in excess of five hundred dollars, and not exceeding ten thousand dollars; five and one-half per cent on any value in excess of ten thousand dollars, and not exceeding twenty-five thousand dollars; seven per cent on any value in excess of twenty-five thousand dollars and not exceeding fifty thousand dollars; eight and one-half per cent on any value in excess of fifty thousand dollars, and not exceeding one hundred thousand dollars; ten per cent on any value in excess of one hundred thousand dollars and not exceeding five hundred thousand dollars, and twelve per cent on any value in excess of five hundred thousand dollars.

**S. 2. Particular estates and remainders.** If the property passing as aforesaid shall be divided into two or more estates, as an estate for years or for life and a remainder, the tax shall be levied on each estate or interest separately according to the value of the same at the death of the decedent. The value of estates for years, estates for life, remainders and annuities shall be determined by the "Actuaries' Combined Experience Tables," at four per cent compound interest.

**S. 3. Bequest to executor.** If a testator bequeaths or devises to his executor or trustee, property in lieu of the latter's commission, the value of such property in excess of reasonable compensation, as determined by the county judge on his own motion, or on the application of any officer on behalf of the state, shall be subject to taxation under this act.

**S. 4. Inventory.** Every executor, administrator and trustees of the estate of a decedent leaving property subject to taxation under this act, whether such property passes by will or by the laws of descent or otherwise, shall, within three months after his appointment, make and file an inventory thereof in the county court having jurisdiction of the estate of the decedent. Any executor, administrator or trustee refusing or neglecting to comply with the provisions of this section shall be liable to a penalty not exceeding one thousand dollars, to be recovered in an action brought in behalf of the state by the district or county attorney upon notice from the judge of the county court.

**S. 5. Where application for probate not made.** If within three months after the death of a decedent leaving property subject to taxation under this act



no application for letters testamentary or of administration shall be made, it shall be the duty of the county court to appoint an administrator. It shall be the duty of the county attorney to report to the judge of the county court all such estates, whether the property subject to taxation passes by will or by laws of descent or otherwise. For each decedent's estate thus reported the county attorney shall receive a compensation of ten per cent of the tax payable, but not to exceed twenty dollars in any one estate. Such payment shall be made by the collector of taxes on the certificate of the county judge, out of the taxes paid him on property belonging to such estate.

**S. 6. Appraisal.** Said tax shall be assessed upon the actual or market value of the property. The judge of the county court having jurisdiction of the estate of the decedent shall, as often as and whenever occasion may require, appoint two competent disinterested persons as appraisers to fix the value of property subject to said tax. The appraisers, being first sworn, shall forthwith give notice to all persons known to have a claim or interest in the property to be appraised, including the executor, administrator or trustee, and the collector of taxes on the county, of the time and place when they will appraise the same. At such time and place they shall appraise such property at its actual or market value at the time of the death of the decedent, and shall thereupon make report thereof in writing to said county judge, who shall file such report. Each appraiser shall be paid, on the certificate of the county judge, two dollars for each day employed in such appraisal, together with his actual necessary expenses incurred therein, which payments shall be made by the collector of taxes out of any moneys in his hands received under this act; provided, however that upon the agreement of the parties interested to dispense with the appointment of appraisers the county judge shall himself appraise the property and make and file a report thereof. If the same decedent shall leave property subject to this tax to more than one person, a separate appraisal and report shall be made for the property of each person.

**S. 7. Assessment. — Lien.** Immediately upon the filing of the report of the appraisement, the county judge shall calculate and determine the amount of tax due on such property under this act, and shall in writing certify such amount to the collector of taxes, to the executor, administrator or trustee, and to the person to whom or for whose use the property passes. Said tax shall be a lien upon such property from the death of the decedent until paid, and shall bear interest from such death until paid, unless payment shall be made within six months after such death, in which case no interest shall be charged.

**S. 8. Deduction of tax.** If such property be in the form of money, the executor, administrator or trustee shall deduct the amount of the tax therefrom before paying it to the party entitled thereto; if it be not in the form of money, he shall withhold the property until the payment by such party of the amount of the tax; in any case the executor, administrator or trustee shall be liable for the amount of the tax and shall have the right, in case of neglect or refusal after due notice of the party entitled to the property to pay such amount to sell, at public sale, after due notice to such party, the property, or so much thereof as may be necessary. Out of the sum realized on such sale, the executor,

administrator or trustee shall deduct the amount of the tax and the expenses of the sale, and shall pay the balance to the party entitled thereto.

**S. 9. Legacy charged on real estate.** Whenever any legacy subject to said tax shall be charged upon or payable out of real estate, the heir or devisee, before paying the legacy, shall deduct the amount of the tax therefrom, and pay the amount so deducted to the executor, administrator or trustee; the amount of the tax shall remain a charge on such real estate until paid, and the payment thereof shall be enforced by the executor or trustee in the same manner as the payment of the legacy itself could be enforced.

**S. 10. Payment.** All taxes received under this act by any executor, administrator or trustee, shall be paid by him within thirty days thereafter to the collector of taxes of the county whose county court has jurisdiction of the estate of the decedent. Upon such payment, the collector shall make duplicate receipts thereof; he shall deliver one to the party making payment, the other he shall send to the comptroller of public accounts, who shall charge the collector with the amount thereof, and shall countersign and affix his seal of office to such receipt and transmit same to the party making payment.

**S. 11. Action to recover.** In case such tax shall not be paid to the collector of taxes within six months after the county judge has notified the amount thereof as hereinbefore provided, the collector shall commence an action to recover the amount of such tax against the executor, administrator or trustee, and the party to whom or for whose use the property has passed; provided, that the county judge may by certificate to the collector extend such time of payment whenever the circumstances of the case require.

**S. 12. Payment to state treasurer.** The collector of taxes of each county shall, on or before the fifteenth day of each month, pay to the state treasurer all taxes received by him under this act before the first day of that month, deducting therefrom all lawful disbursements made by him under this act, and also his compensation at the rate of one per cent of all taxes collected under this act.

**S. 13. Deposit by state treasurer.** The moneys received by the state treasurer under this act shall be deposited in the state treasury to the credit of the fund now there existing and known as the general revenue fund.

**S. 14. Refund to pay debts.** Whenever any debts shall be proven against the estate of a decedent after the distribution of property on which the tax has been paid, and a refund is made by the distributee, a due proportion of the tax so paid shall be repaid to him by the executor, administrator or trustee, if still in his hands, or by the collector of taxes if it has been paid to him. The collector shall pay such sums upon the order of the county judge out of any money in his possession under this act; and the comptroller of public accounts shall credit the collector with all sums so paid out by him.

**S. 15. Allowance of final account.** No final account of an executor, administrator or trustee shall be allowed by the county judge unless such account shows, and said judge finds, that all taxes imposed under this act on any property

or interest passing through his hands as such have been paid; and the receipt of the collector of taxes for such taxes shall be the proper voucher for such payment.

**S. 16. When administrator dispensed with.** If for any reason administration of the estate of a decedent leaving property subject to taxation under this act, shall not be necessary in this state, except in order to carry out the provisions of this act, it shall be in the discretion of the county judge upon the filing of a satisfactory inventory of the taxable property by the trustee or owner, to dispense with the appointment of an administrator. Upon the filing of such inventory, the appraisal and other proceedings required by this act shall be had as in other cases.

## UTAH.

### In General.

Utah since 1901 has taxed all inheritances at the uniform rate of five per cent on the excess of the entire estate over \$10,000.

The state of Utah has officially notified the state of Connecticut that it does not tax stock of Utah corporations owned by non-residents if the stock is kept outside the state; but nevertheless the state of Utah is collecting the tax.

### List of Statutes.

- 1901. Statutes of Utah, c. 62, p. 61.
- 1903. " " " c. 93, p. 77.
- 1905. " " " c. 119, p. 198.
- 1907. Compiled Laws of Utah, ss. 1220 x - 1220 x 31.

### Constitutional Limitations.

Utah Constitution, 1851, a. 13, s. 3, as amended in 1900.

The legislature shall provide by law a uniform and equal rate of assessment and taxation on all property in the state, according to its value in money, and shall prescribe by general law such regulations as shall secure a just valuation for taxation of all property, so that every person and corporation shall pay a tax in proportion to the value of his, her or its property.

### STATUTES.

Utah St. 1901, c. 62. Approved March 14, 1901.

AN ACT TO TAX GIFTS, LEGACIES AND INHERITANCES in certain cases, and to provide for the collection of the tax.

This title does not indicate as claimed that the tax is imposed only upon the separate portions of the decedent's estate exceeding ten thousand dollars transmitted by gift, legacy or inheritance. *Dixon v. Ricketts*, 26 Utah 215, 72 P. 947.

Utah St. 1901, c. 62. Approved March 14, 1901.

S. 1. All property in excess of ten thousand dollars subject to inheritance tax. All property within the jurisdiction of this state and any interest therein, whether belonging to the inhabitants of this state or not, and whether tangible or intangible, which shall pass by will or by the statutes of inheritance of this or any other state, or by deed, grant, sale or gift made or intended to take effect in possession or in enjoyment after the death of the grantor or donor, to any

person in trust or otherwise, shall be subject to a tax of five per centum of its value above the sum of ten thousand dollars; after the payment of all debts, for the use of the state; and all administrators, executors and trustees, and any such grantee under a conveyance, and any such donee under a gift made during the grantor's or donor's life, shall be respectively liable for all such taxes to be paid by them respectively, except as herein otherwise provided, with lawful interest as hereinafter set forth until the same shall have been paid. The tax aforesaid shall be and remain a lien on such estate from the death of the decedent until paid.

### Origin.

Section 1 of the inheritance tax law of 1901 is a transcript of the Iowa statute and the Iowa construction must be followed. *Dixon v. Ricketts*, 26 U. 215, 72 P. 947.

### Constitutional.

Utah St. 1901, c. 62, is constitutional and is not void under constitutional provisions requiring uniformity and equality of taxation. *Dixon v. Ricketts*, 26 Utah 215, 72 P. 947.

### Tax on Whole Estate.

Utah St. 1901, c. 62, s. 1 and s. 13, show that it was the intention of the legislature to impose the tax upon the right of devolution and succession in respect to the whole estate of the decedent above the value of ten thousand dollars; and the indebtedness of the estate transmitted to successors and not upon the property itself or any distributive share. It is apparent from section 1 that this was the intention of the act, for it is not conceivable how the payment of the debts, the amount of which and ten thousand dollars fixes the limit of the exemption from tax, can apply to anything other than the whole of the decedent's estate upon which the indebtedness is a charge. *Dixon v. Ricketts*, 26 Utah 215, 72 P. 947.

### Liabilities.

The inheritance tax, while not a debt of the testator, was properly charged to the beneficiaries. *In re Lotzgesell* (Wash. 1911), 113 Pac. 1105.

Ss. 2-12 cover the taxation of estates for life or for years and remainders and the levying, collection and payment of the tax.

S. 13. No settlement allowed until tax paid. No final settlement of the account of any executor, administrator, or trustee shall be accepted or allowed

unless it shall show, and the court shall find, that all taxes imposed by the provisions of this act upon any property or interest therein belonging to the estate to be paid by such executors, administrators or trustees, and to be settled by said account, shall have been paid, and the receipt of the state treasurer for such tax shall be the proper voucher for such payment.

Utah St. 1901, c. 62, approved March 14, 1901, s. 14, gives the district court jurisdiction on all questions in relation to the tax.

Utah St. 1903, c. 93, approved March 12, 1903, amended Utah St. 1901, c. 62, ss. 1 and 11.

Utah St. 1905, c. 119, approved March 17, 1905, is an entirely new act in substitution for Utah St. 1901, c. 62.

## THE PRESENT ACT.

### Compiled Laws of Utah.

**1220x.** All property in excess of \$10,000 subject to inheritance tax. All property within the jurisdiction of this state and any interest therein whether belonging to the inhabitants of this state or not, and whether tangible or intangible, which shall pass by will or by the statutes of inheritance of this or any other state, or by deed, grant, sale, or gift made or intended to take effect in possession or enjoyment after the death of the grantor or donor, to any person in trust or otherwise, shall be subject to a tax of five per cent of its market value above the sum of \$10,000, after the payment of all debts, for the use of the state; and all administrators, executors, and trustees, and any such grantee under conveyance, and such donee under a gift made during the grantor's or donor's life, shall be respectively liable for all such taxes to be paid by them respectively, except as herein otherwise provided, with lawful interest as hereinafter set forth, until the same shall have been paid. The tax aforesaid shall be and remain a lien on such estate from the death of the decedent until paid. In determining the amount of tax to be paid under the provisions of this section, after the payment of all debts the sum of \$10,000 shall be deducted from the entire estate and the tax shall be computed and paid on the entire remainder; and the court shall determine the amount of tax to be paid by the several devisees, legatees, grantees, or donees of the decedent. ('01, p. 61; '03, p. 77; '05, p. 198.)

[See notes to the Act of 1901, *ante*, p. 1130.]

**1220x1.** Term. "debts" defined. The term "debts," as used in this chapter, shall include, in addition to debts owing by decedent at the time of his death, the local or state taxes due from the estate prior to his death, a reasonable sum for funeral expenses, the court costs, the cost of appraisement made for the purpose of assessing the inheritance tax, the statutory fees of executors, administrators, or trustees, and no other sum; but said debts shall not be deducted unless the same are approved and allowed, within fifteen months from the death of decedent, as established claims against the estate, unless otherwise ordered by the judge of the proper county. ('05, p. 198.)

**1220x2.** Appraisers to be appointed. In each county the court shall annually appoint three competent residents and freeholders of said county, to

act as appraisers of all property within its jurisdiction, which is charged or sought to be charged with an inheritance tax. Said appraisers shall serve for one year, until their successors are appointed and qualified. They shall each take an oath to faithfully and impartially perform the duties of the office, but shall not be required to give bond. They shall be subject to removal at any time at the discretion of the court, and the court, or judge thereof in vacation, may also in its discretion, either before or after the appointment of the regular appraisers, appoint other appraisers to act in any given case. Vacancies occurring otherwise than by expiration of term shall be filled by the appointment of the court, or by a judge in vacation. ('05, p. 198.)

**1220x3. Appraisers must not take fee from heir, etc.** Any appraiser appointed by this title who shall take any fee or reward from any executor, administrator, trustee, legatee, next of kin or heir of any decedent, or from any other person liable to pay said tax or any portion thereof, shall be guilty of a misdemeanor, and, upon conviction in any court having jurisdiction of misdemeanors, he shall be fined not less than \$250 nor more than \$500, and imprisoned not exceeding ninety days, and in addition thereto the judge shall dismiss him from such service. ('05, p. 199.)

**1220x 4. Commission to appraisers.** When an estate is opened in which there is property which may be subject to the inheritance tax, the clerk shall forthwith issue a commission to the appraisers, who shall fix a time and place for appraisement. ('05, p. 199.)

**1220x5. Duties to appraisers.** It shall be the duty of all appraisers appointed under the provisions of this title to forthwith give notice to the state treasurer and other persons known to be interested in the property to be appraised, of the time and place at which they will appraise such property, which time shall not be less than ten days from the date of such notice. The notice shall be served in the same manner as is prescribed for the commencement of civil actions, and if not practicable to serve the notice provided for by statute, they shall apply to the court or a judge in vacation for an order as to notice, and upon service of such notice and the making of such appraisement, the said notice, return thereon, and appraisement shall be filed with the clerk, and a copy of such appraisement shall be filed by the clerk with the state treasurer. ('05, p. 199.)

**1220x6. Objections to appraisements, Hearing on.** The state treasurer or any person interested in the estate appraised may, within twenty days thereafter, file objections to said appraisement, on the hearing of which as an action in equity, either party may produce evidence competent, or material to the matters therein involved. If, upon such hearing, the court finds the amount at which the property is appraised is at its value on the market in the ordinary course of trade, and the appraisement was fairly and in good faith made, it shall approve such appraisement; but if it finds that the appraisement was made at a greater or less sum than the value of the property in the ordinary course of trade, or that the same was not fairly or in good faith made, it shall set aside the appraisement, appoint new appraisers, and so proceed until a fair and good appraisement of the property is made at its value in the market in the ordinary

course of trade. The state treasurer, or any one interested in the property appraised, may appeal to the supreme court from the order of the district court approving or setting aside any appraisement to which exceptions have been filed. Notice of appeal shall be served within thirty days from the date of the order appealed from, and the appeal shall be perfected in the time now provided for appeals in equitable actions. In case of appeal the appellant, if he is not the state treasurer, shall give bond to be approved by the clerk of the court, to pay the tax, which bond shall provide that the said appellant and sureties shall pay the tax for which the property may be liable, with cost of appeal. If upon the hearing of objections to the appraisement, the court finds that the property is not subject to the tax, the court shall upon expiration of time for appeal when no appeal has been taken order the clerk to enter upon the lien book a cancellation of any claim or lien for taxes. If at the end of twenty days from the filing of the appraisement with the clerk, no objections are filed, the appraisement shall stand approved. ('05, p. 199.)

**1220x7. Action on cases now pending.** In all cases where the property of an estate has been subject to or liable for the payment of the tax provided in this title, or where such property has heretofore been appraised and the tax not yet paid, and the notice required in this title was not given, it shall be the duty of the court, immediately upon the taking effect of this title, to enforce such tax, or to set aside any appraisement heretofore made, and order a reappraisement of the same to be made as in this title provided, anything in the law contrary notwithstanding. ('05, p. 200.)

**1220x8. Time of appraisement and payment of tax.** All the property of the decedent subject to such tax shall, except as hereinafter provided, be appraised within thirty days next after the appointment of an executor, administrator, or trustee, at its market value in the ordinary course of trade, and the tax thereon, calculated upon the appraised market value after deducting debts for which the estate is liable, shall be paid by the persons entitled to said estate within fifteen months from the death of the testator or intestate, unless a longer period is fixed by the court, and, in default thereof, the court shall order the same, or so much thereof as may be necessary to pay such tax, to be sold. ('01, p. 62; '05, p. 200.)

**1220x9. Estates for life or term of years.** Whenever any real estate of a decedent shall be subject to such tax, and there be a life estate or interest for a term of years given to one party or parties, and the remainder to another party or parties, the court shall direct the interest of the life estate, or term of years, to be appraised at its market value in the ordinary course of trade, and, upon the approval of such appraisement by the court, the party entitled to such life estate, or term of years, shall, within sixty days thereafter, pay such tax, and in default thereof the court shall order such interest in said estate, or so much thereof as shall be necessary to pay such tax, to be sold. Upon the determination of such life estate, or term of years, the court shall, upon its own motion, or upon the application of the state treasurer, cause such estate to be appraised at its then market value in the ordinary course of trade, from which shall be deducted the value of any improvements thereon, or betterments thereto, if any, made by the remainder man during the time of the prior estate, to be



ascertained and determined by the appraisers, and the tax on the remainder shall be paid by such remainder man within sixty days from the approval by the court of the appraisers. If such tax is not paid within said time, the court shall then order said real estate, or so much thereof as shall be necessary to pay such tax, to be sold. Whenever any personal estate of a decedent shall be subject to such tax and there be a life estate or interest for a term of years given to one party or parties, and the remainder to another party or parties, the court shall inquire into and determine the market value in the ordinary course of trade, of the life estate or interest for the term of years, and order and direct the amount of the tax thereon to be paid by the prior estate and that to be paid by the remainder man, each of whom shall pay his proportion of the tax within sixty days from such determination, unless a longer period is fixed by the court, and, in default thereof, the executor, administrator, or trustee shall pay the same out of said property and hold the same from distribution, and invest it at interest under the order of the court until said tax is paid, or until the interest on the same equals the amount of such tax, which shall thereupon be paid. ('01, p. 62; '05, p. 200.)

**1220x10. Where bequest is in lieu of compensation to executor.** Whenever a decedent appoints one or more executors or trustees and in lieu of his or their allowance or commission makes a bequest or devise of property to him or them, which would otherwise be liable to said tax, or appoints them as residuary legatees, and said bequests, devises, or residuary legacies exceed what would be a reasonable compensation for his or their services, such excess shall be liable to such tax, and the court having jurisdiction of his or their accounts, upon its own motion or on application of the state treasurer, shall fix such compensation. ('01, p. 63; '05, p. 201.)

**1220x11. Where legacy is a charge upon real estate.** Whenever any legacies subject to said tax are charged upon or payable out of any real estate, the heir or devisee, before paying the same, shall deduct said tax therefrom and pay it to the executor, administrator, trustee, or state treasurer, and the same shall remain a charge and be a lien upon said real estate until it is paid; and payment thereof shall be enforced by the executor, administrator, trustee, or state treasurer in his name of office, in the same manner as the payment of the legacy itself could be enforced. ('01, p. 63; '05, p. 201.)

**1220x12. Executor, etc., to collect tax.** Every executor, administrator, or trustee having in charge or trust any property subject to said tax, and which is made payable to him, shall deduct the tax therefrom, or shall collect the tax thereon from the legatee or person entitled to said property, and he shall not deliver any specific legacy or property subject to said tax to any person until he has collected the tax thereon. ('01, p. 63; '05, p. 202.)

**1220x13. Taxes payable to state treasurer within fifteen months.** All taxes imposed by this title shall be payable to the state treasurer, and those which are made payable by executors, administrators, or trustees shall be paid within fifteen months from the death of the testator or intestate, unless a longer period is fixed by the court, or a judge thereof in vacation. All taxes not paid

within fifteen months from death of the testator or intestate shall draw interest at the rate of eight per cent per annum until paid. ('01, p. 63; '05, p. 202.)

**1220x14. Executor, etc., to collect tax in certain cases, other cases state treasurer.** It is hereby made the duty of all executors, administrators, or trustees charged with the management or settlement of any estate subject to the tax provided for in this title, to collect and pay to the state treasurer the amount of the tax due from any devisee, legatee, grantee, or donee of the decedent, except in cases falling under the provisions of sections 1220x8, 1220x9, in which cases the state treasurer shall collect the same. Applications may be made to the district court by such executor, administrator, trustee, or state treasurer to sell the real estate subject to said tax in an equitable action, or, if made to the court having charge of the settlement of the estate, the proceedings shall conform as nearly as may be to those for the sale of real estate of decedent for the settlement of his debts. ('01, p. 63; '05, p. 202.)

**1220x15. No settlement allowed until tax paid.** No final settlement of the account of any executor, administrator, or trustee shall be accepted or allowed unless it shall show, and the court shall find, that all taxes imposed by the provisions of this title upon any property or interest therein belonging to the estate to be paid by such executors, administrators, or trustees, and to be settled by said account, shall have been paid, and the receipt of the state treasurer for such tax shall be the proper voucher for such payment. ('01, p. 64; '05, p. 202.)

[See notes to the Act of 1901, *ante*, p. 1029.]

**1220x16. District court to have jurisdiction.** The district court having either principal or ancillary jurisdiction of the settlement of the estate of the decedent shall have jurisdiction to hear and determine all questions in relation to said tax that may arise affecting any devise, legacy or inheritance, or any grant or gift, under this title, subject to appeal as in other cases, and the state treasurer shall in his name of office represent the interests of the state in any proceedings. ('01, p. 64; '05, p. 202.)

**1220x17. State treasurer may demand information from executors, etc.** Before issuing his receipt for the tax, the state treasurer may demand from executors, administrators, or trustees, such information as may be necessary to verify the correctness of the amount of the tax and interest, and, when demanded, they shall send such treasurer certified copies of such parts of their reports as he may demand, and upon the refusal of said parties to comply with the demand of the state treasurer, it is the duty of the clerk of the court to comply with such demand, and the expenses of making such copies and transcripts shall be charged against the estate, as are other costs in probate. ('05, p. 203.)

**1220x18. Inheritance tax and lien book to be kept by clerk.** The clerk of the district court in and for each county, where an inheritance tax is charged or sought to be charged, shall provide and keep a suitable book, substantially bound and suitably ruled, to be known as the inheritance tax and lien book, in which shall be kept a full and accurate record of all proceedings in cases

where property is charged or sought to be charged with the payment of an inheritance tax under the laws of this state, to be printed and ruled so as to show upon one page:—

1. The name, place of residence, and date of death of the decedent;
2. Whether the decedent died testate, or intestate, and if testate, the record and page where the will was probated and recorded;
3. The name and postoffice address of the executor, administrator, trustee, or grantee, with date of appointment or transfer;
4. The names, postoffice addresses, and relationship, if known, of all the heirs, devisees, and grantees;
5. The appraised valuation of the personal property;
6. The amount of inheritance tax due upon said personal property;
7. A record of payment with amount and date;
8. Date of filing objections and names of objectors;
9. Blank for index and reference to all proceedings, and for memorandum entries of the court or judge in relation thereto.

Upon the opposite page of such record shall be printed:—

1. Real estate from (naming decedent) which is subject to the lien prescribed by the statute for inheritance tax;
2. A full and accurate description of such real estate, by forty-acre or fractional tracts, or by lots, or other complete individual description;
3. The appraised valuation as reported by the appraisers, with a reference to the record of their report, as to each piece of such real estate;
4. The amount of inheritance tax due upon each such piece;
5. A record of payments, with dates and amounts;
6. Date of filing objections, and names of objectors;
7. Blank for index and reference and to all proceedings, and for memorandum entries of court or judge in relation thereto. ('05, p. 203.)

**1220x19. Executor, etc., to report facts.**—Entry of real estate in lien book. Upon the appointment and qualification of each executor, administrator, and testamentary trustee, the clerk issuing the letters shall at the same time deliver to him a blank form upon which he shall be required to make detailed report of the following facts:—

1. Name and last residence of the decedent;
2. Date of death;
3. Whether or not he left a will;
4. Name and postoffice of executor, administrator, or trustee;
5. Name and postoffice of surviving wife or husband, if any;
6. If testate, name and postoffice of each beneficiary under the will;
7. Relationship of each beneficiary to the testator;
8. If intestate, name and postoffice of each heir at law;
9. Relationship of each heir at law to the decedent;
10. Inventory of all real estate of the decedent, giving amount and description of each tract.

Within ten days after his qualification, each executor, administrator, and testamentary trustee shall make and return to the clerk, under oath, a full and detailed report as indicated in the preceding section, any will to the contrary notwithstanding.

standing, and upon his failure to do so, the clerk shall forthwith report his delinquency to the district court if in session, or to a judge of said court if in vacation, for such order as may be necessary to enforce an observance of this section. If it appears from the inventory or report so filed that the real estate, or any part of it, is subject to an inheritance tax, it shall be the duty of the executor or administrator to cause the lien of the same to be entered upon the lien book in the office of the clerk of the court in each county where each particular tract of said real estate is situated, and no conveyance of said real estate or interest therein, which is subject to such tax before or after entering of said lien, shall discharge the real estate so conveyed from the operation thereof, and no final settlement of the account of any executor, administrator, or trustee shall be excepted or allowed unless a strict compliance with the provisions of this section has been had by such person. ('01, p. 61; '05, p. 204.)

**1220x20. Extension of time for appraisement.** Whenever, by reason of the complicated nature of an estate, or by reason of the confused condition of the decedent's affairs, it is impracticable for the executor, administrator, or trustee or beneficiary of said estate to file with the clerk of the court a full, complete, and itemized inventory of the personal assets belonging to the estate, within the time required by statute for filing inventories of the estate, the court may, upon the application of such representatives or parties in interest, extend the time for the making of the inheritance appraisement for a period not to exceed three months beyond the time fixed by law. ('05, p. 205.)

**1220x21. Clerk to enter in inheritance tax and lien book.—Index.** The clerk shall from time to time enter upon the inheritance tax and lien books the title of all estates subject to the inheritance tax, as shown by the inventories or lists of heirs filed in his office, or as reported to him by the district attorney or the state treasurer, and shall enter in said book as against each estate or title, at the appropriate place, all such information relating to the situation and condition of the estate as he may be able to obtain from the papers filed in his office, or from the district attorney or the state treasurer, as may be necessary to collection and enforcement of the tax. He shall also immediately index all liens entered upon the inheritance tax and lien book in the book kept in his office for that purpose. ('05, p. 205.)

**1220x22. Complete record by clerk.** In all cases entered upon the inheritance tax and lien book, the clerk shall make a complete record in the proper probate record, of all the proceedings, orders, reports, inventories, appraisements and all other matters and proceedings therein. ('05, p. 205.)

**1220x23. Duties of clerk.** It shall be the duty of each clerk of the district court to make examination from time to time of all reports filed with him by administrator, executors, and trustees, pursuant to law; also to make examination of all foreign wills offered for probate or recorded within his county, as well as of the record of deeds and conveyances in the recorder's office of said county, and if from such examination, or from information or knowledge coming to him from any other source, he finds or believes that any property within his county, or within the jurisdiction of the district court of said county, has, since May 14, 1901, passed by will or by the intestate laws of this or any other state, or by deed,

grant, sale, or gift made or intended to take effect, in possession or in enjoyment after the death of the testator, donor, or grantor, to any person within this state, he shall make report thereof in writing to the state treasurer, embodying in such report the name and residence of the decedent, date of death, name and address of administrator, executor, or trustee; the description of any property liable to a tax and the county in which it is located, and name and relationship of all beneficiaries or heirs. Any citizen of the state having knowledge of property liable to such tax, against which no proceeding for enforcing collection thereof is pending, may report the same to the clerk, and it shall be the duty of such officer to investigate the case, and if he has reason to believe the information to be true, he shall forthwith institute such proceedings substantially as above indicated. ('05, p. 205.)

**1220x24. Duties of court and district attorney.** On the first or second day of each regular term, the court shall require the clerk to present for its inspection, the inheritance tax and lien book hereinbefore provided for, together with all reports of administrators, executors, and trustees which have been filed pursuant to this title since the last preceding term. The district attorney shall also attend and make report to the court concerning the progress of all cases pending for the collection of such taxes, together with any other facts which, in his judgment, may aid the court in enforcing the general observance of the inheritance tax law. If from information obtained from the records or reports, or from any other source, the court has reason to believe that there is property within its jurisdiction liable to the payment of an inheritance tax, against which proceedings for collection are not already pending, it shall enter an order of record, directing the district attorney to institute such proceedings forthwith. Should any estate, or the name of any grantee or grantees, be placed upon the book at the suggestion of the district attorney or the state treasurer in which the papers already on file in the clerk's office do not disclose that any inheritance tax is due or payable, the district attorney shall forthwith give to all parties in interest such notice as the court or judge may prescribe, requiring them to appear on a day to be fixed by the said court or judge, and show cause why the property should not be appraised and subjected to said tax. If upon hearing at the time so fixed, the court is satisfied that any property of the decedent, or any property devised, granted, or donated by him, is subject to the tax, the same proceedings shall be had as in other cases, so far as applicable. ('05, p. 206.)

**1220x25. Costs, by whom paid.** In all cases where any property so passes as to be liable to taxation under the inheritance law, all costs of the proceedings had for determining the amount of such tax or for determining whether the property of the entire estate is sufficient in amount as to render that part passing to heirs subject to the tax, shall be chargeable to such estate, and to discharge the lien upon such property all costs, as well as the taxes, must be paid. In all other cases the costs are to be paid as ordered by the court, and when a decision adverse to the state has been rendered, with an order that the state pay the costs, it is the duty of the clerk of the court in which such action was pending to certify the amount of such costs to the state treasurer, who shall, if said costs be correctly certified, and the case has been finally terminated, present the claim to the state board of examiners, to audit, and said claim being allowed by said board, the state auditor is directed to issue a warrant on the state treasurer in payment of such costs. ('05, p. 207.)

**1220x26. Safe deposit company or bank to give notice before transferring securities.** No safe deposit company, bank, or other institution, person, or persons holding securities or assets of the decedent shall deliver or transfer the same to the executor or administrator or legal representative of said decedent unless notice of the time and place of such intended transfer be served upon the state treasurer at least five days prior to the transfer thereof, or unless the tax for which such securities or assets are liable under this title shall be first paid. It shall be lawful for, and the duty of, the state treasurer personally, or by any person by him duly authorized, to examine such securities or assets at the time of such delivery or transfer. Failure to serve such notice upon the state treasurer, or to allow such examination on the delivery of such securities or assets to such executor, administrator, or legal representative before said tax is paid shall render such safe deposit company, trust company, bank, or other institution, person, or persons liable for the payment of the taxes due upon such securities or assets as provided in this title. ('05, p. 207.)

**1220x27. In case of foreign estate.** Whenever any property belonging to a foreign estate, which estate, in whole or in part, is liable to pay an inheritance tax in this state, the said tax shall be assessed upon the market value of said property remaining after the payment of such debts and expenses as are chargeable to the property under the laws of this state; in the event that the executor, administrator, or trustee of such foreign estate files with the clerk of the court having ancillary jurisdiction and with the state treasurer, duly certified statements exhibiting the true market value of the entire estate of the decedent owner, and the indebtedness for which the said estate has been adjudged liable, which statements shall be duly attested by the judge of the court having original jurisdiction, the beneficiaries of said estate shall then be entitled to have deducted such proportion of the said indebtedness of the decedent from the value of the property as the value of the property within this state bears to the value of the entire estate. ('05, p. 207.)

**1220x28. Id.** Whenever any property, real or personal, within this state, belongs to a foreign estate, said foreign estate passes in part exempt from the inheritance tax, and in part subject to said inheritance tax, and it is within the authority or discretion of the foreign executor, administrator, or trustee administering the estate to dispose of the property not specifically devised to direct heirs or devisees in the payment of the debts owing by the decedent at the time of his death or in the satisfaction of legacies, devisees, or trusts given to direct and collateral legatees or devisees, or in payment of the distributive shares of any direct and collateral heirs, then the property within the jurisdiction of the state, belonging to such foreign estate, shall be subject to the inheritance tax imposed by this title, and the tax due thereon shall be assessed as provided in the next preceding section of this title, and with the same proviso respecting the deduction of the proportionate share of the indebtedness, as therein provided. ('05, p. 208.)

**1220x29. Id.—Tax on corporate stock.** If a foreign executor, administrator or trustee shall assign or transfer any corporate stock or obligations in this state standing in the name of a decedent, or in trust for a decedent, liable to such tax, the tax shall be paid to the state treasurer on or before the transfer thereof;

otherwise the corporation permitting its stock to be so transferred shall be liable to pay such tax, and it is the duty of the state treasurer to enforce the payment thereof. ('05, p. 208.)

**1226x30. State treasurer may compromise certain cases.** Whenever an estate charged, or sought to be charged, with the inheritance tax, is of such a nature or is so disposed that the liability of the estate is doubtful, or the value thereof cannot with reasonable certainty be ascertained under the provisions of law, the state treasurer may, with the approval of the attorney general, which approval shall set forth the reasons therefor, compromise with the beneficiaries or representatives of such estates, and compound the tax thereon; but said settlement must be approved by the district court or judge of the proper court, and after such approval, the payment of the amount of the taxes so agreed upon shall discharge the lien against the property of the estate. ('05, p. 208.)

**1226x31. Title applies to pending cases.** This title shall apply to all pending estates which are not closed, and the property subjected by this title to the said tax is liable to the provisions incorporated in this title. ('05, p. 208.)

## VERMONT.

### List of Statutes.

1862.	Statutes of Vermont, c. 126, s. 20.
1866.	" " " No. 21, s. 1.
1874.	" " " No. 80.
	Revised Laws, s. 4524.
1892.	Statutes of Vermont, No. 47.
1894.	" " " s. 5373.
1896.	" " " No. 46.
1904.	" " " No. 30.
1906.	Public Statutes, c. 38, ss. 821-901.
1906.	" " " s. 6313
1906.	" " " s. 6319 repealing.
1904, No. 30, and 1896, No. 46.	
1908.	Statutes of Vermont, No. 31, ss. 1-3, pp. 27-28.
1910.	" " " No. 55.
1910.	" " " No. 56.

### In General.

Vermont has long had a system of probate fees but its first collateral inheritance tax was enacted in 1896 and substantially amended in 1904. (For constitutionality see *Hickok's Estate*, 78 Vt. 259.) Its main features are very similar to the New Hampshire statute. The tax is on collateral inheritances only, the rate is uniformly five per cent, and no amount is exempt. No tax is levied on an inheritance to father, mother, husband, wife, lineal descendant, stepchild, adopted child, child of stepchild or of adopted child, wife or widow of son, husband of daughter. Public Sts. c. 38, ss. 821-901, as amended by acts of 1908, No. 31, approved January 28, 1909.

A bill for a graduated direct inheritance tax passed the House of Representatives during the 1910-1911 session, but it failed to pass the Senate.

Vermont taxes stock in a Vermont corporation or national bank owned by a non-resident and, like New Hampshire, taxes registered bonds as well. It goes even a step further and makes a claim for an inheritance tax where a deceased non-resident owns stock in a corporation not incorporated under the laws of Vermont, provided



such foreign corporation has its principal office in Vermont. Corporations and individuals transferring or delivering securities, and banks that pay deposits of non-residents, are made responsible for the tax.

It is the practice of the tax authorities to require an inventory of the entire property of the deceased, and a copy of the will before permitting a Vermont corporation to transfer securities owned by a deceased non-resident.

If any inheritance tax has been paid by either a resident or non-resident to any other state or government, except the United States, on account of the transfer of securities, bank deposits or other assets, the Vermont tax is limited to an amount sufficient to make the total tax five per cent.

Vermont does not tax the bank deposits of a Vermont resident in another state and this would seem to apply to securities outside the state as well. *Joylin's Estate*, 76 Vt. 88.

### **Constitutional Limitations.**

Vermont Constitution, 1793, as amended, seems to contain no restriction on the taxing power in regard to uniformity or as to inheritance tax.

See Thorpe, *American Constitutions*, p. 3762 *et seq.*

The constitution of Vermont, established July 9, 1793, was amended by bill of rights, article IX, "That every member of society hath a right to be protected in the enjoyment of life, liberty and property, and therefore is bound to contribute his proportion towards the expence of that protection, and yield his personal service, when necessary, or an equivalent thereto, but no part of any person's property can be justly taken from him, or applied to public uses, without his own consent, or that of the representative body of freemen."

See notes to the Act of 1896, *post*, p. 1143.

### **Probate Fees.**

Vt. St. 1862, c. 126, s. 20, imposes a fee for the probate or administration where the estates do not exceed \$150, one dollar; in all other estates, two dollars; and other fees for other proceedings in probate. Probate fees in Vermont are also covered in Vt. St. 1866, No. 21, s. 1; and Vt. St. 1874, No. 80; and Revised Laws, s. 4524; Vt. St. 1892, No. 47; and Vt. St. 1894, s. 5373.

## THE COLLATERAL INHERITANCE ACT OF 1896.

Vt. St. 1896, c. 46. Approved November 24, 1896.

S. 1. All property within the jurisdiction of this state, and any interest therein, whether belonging to inhabitants of this state or not, and whether tangible or intangible, which shall pass by will or by the intestate laws of this state, or by deed, grant, sale, or gift made or intended to take effect in possession or enjoyment after the death of the grantor, to any person in trust or otherwise, other than to or for the use of the father, mother, husband, wife, lineal descendant, adopted child, the lineal descendant of any adopted child, the wife or widow of a son, or the husband of the daughter of a decedent, or to or for charitable, educational or religious societies or institutions, the property of which is exempt by law from taxation, shall be subject to a tax of five per centum of its value, for the use of the state, and all administrators, executors, and trustees, and any such grantee under a conveyance made during the grantor's life shall be liable for all such taxes, with lawful interest as hereinafter provided, until the same shall have been paid as hereinafter directed; provided, however, that no estate shall be subject to the provisions of this act, unless the value of the same, after payment of debts and expenses of administration including money paid out under order of the probate court for the purchase of burial stones, shall exceed the sum of two thousand dollars.

### Equality of Tax.

The Vermont constitution provides that every member of society is bound to contribute "his proportion" towards the expense of the protection which the state affords him, and it was claimed that this excludes all methods of taxation that are not uniform, equal and proportionate, and that the collateral inheritance tax lacked uniformity. The court holds, however, that the question is what constitutes equality of apportionment within the meaning of this provision, and in ascertaining this the basis of the act in question must be considered, and that the statute is not a tax upon property but a tax upon the transmission of property, which is not a natural right, but a privilege accorded by the state. And the court decides that the constitutional requirement of proportional contributions was not intended to restrict the state to methods of taxation that operate equally upon all its inhabitants, regardless of the variety and measure of the advantages derived from its protection and regulation. A member of the body politic has from the state not only the protection of his property, but the privilege of taking property by descent and by will. It seems clear that privileges of this character as well as property are to be considered in determining the just proportion of the individual. *In re Hickok*, 78 Vt. 259, 62 A. 724.

**Situs of Debts. — Nature of Tax.**

It was agreed that the Vermont statute of 1896, c. 46, is a tax upon the right to succeed to estate left vacant by death and is imposed by the sovereignty in virtue of its authority to enforce contribution from those who become vested with property by its grace and power. This sovereignty is clearly the one which has the right to say who shall succeed and that is the sovereignty in which the assets are located, which in the case of debts is placed where the debtor resides.

The testatrix died a resident of Vermont, leaving debts due to her from non-residents of Vermont; and the court holds that these debts are not to be included in fixing the amount of the estate subject to an inheritance tax under this statute.

The act applies to "all property within the jurisdiction of this state." The court remarks that this must mean within its probate jurisdiction and that therefore the debts were not within the jurisdiction, for immediately upon the death of the creditor they became assets in the jurisdiction where the debtor resided. This is well settled in Vermont. Furthermore the statute applies only to property which "passed by will or by the intestate laws of this state." And the court remarks that this property did not pass by virtue of the Vermont law at all, for that law had no force in the domicile of the debtors; it passed by force and virtue of the law of those jurisdictions. *In re Joyslin*, 76 Vt. 88, 56 A. 281.

The court remarks that it is aware that other courts have reached an opposite conclusion and cites *Frothingham v. Shaw*, 175 Mass. 59, *State v. Dalrymple*, 70 Md. 294, 17 A. 82, 3 L. R. A. 372, *In re Swift*, 137 N. Y. 77, 64 Hun 639, 32 N. E. 1096, 18 L. R. A. 709, 19 N. Y. Suppl. 292. (This decision stands as an anomaly in the law. See *ante*, p. 172. It was avoided by the act of 1904, *post*, p. 1145.)

**Exemptions. — Construction.**

It is a well established general rule that exemptions from taxation are strictly construed, and that no claim of exemption can be sustained unless within the express letter or necessary scope of the exempting clause. *In re Hickok*, 78 Vt. 259, 62 A. 724.

**Exemptions. — Validity.**

It was suggested that the law is invalid because of the inequality arising from the exemption of estates not exceeding two thousand

dollars in value, but the Vermont constitution does not prevent the making of exemptions. *In re Hickok*, 78 Vt. 259, 265, 62 A. 724.

Vt. St. 1896, c. 46, ss. 2-16, cover the appraisal of the estate and the determination and collection of the tax.

### THE AMENDMENT OF 1904.

Vt. St. 1904, c. 30, s. 1. Every person other than the father, mother, husband, wife, lineal descendant, adopted child, lineal descendant of an adopted child, the wife or widow of a son, the husband of the daughter of a decedent or a city or town for cemetery purposes; and every charitable, educational or religious society or institution other than such as are created and existing under and by virtue of the laws of this state and having its principal office herein, that shall receive in trust or otherwise any legacy or distributive share comprised of or arising from property or any interest therein passing by will, the law of descent or the decree of a court in this state, from any deceased person who owned such property at the date of his decease shall, except as herein otherwise provided, be subject to a tax for the use of the state equal to five per cent of the value in money of such legacy or distributive share.

#### "The Decree of a Court in This State."

After the decision in *In re Joyslin*, 76 Vt. 88, 56 A. 281, the legislature passed Vermont statute of 1904, c. 30, which changed the phraseology of the earlier act, which included only property which passed by will or by the intestate laws of the state, to include also property which shall pass by "the decree of the court of this state."

Where the record does not show that any administration was had in the foreign jurisdiction, and that the several sums due from foreign debtors were collected by the administrator appointed in Vermont, and the proceeds brought here, where they formed a part of the assets which passed by the final decree of the probate court, such assets are subject to tax.

It was argued that in Vermont statute 1904, c. 30, s. 81 ("shall also apply to all persons who deceased prior to the enactment hereof") the word "persons" had reference to those who received the property, not those from whom it passes. But the court refused the suggestion, saying it would lead to an absurd result. In view of the settled law that the inheritance tax is not a tax on property, but on the transmission of property, it can make no difference with the tax whether the legatee or distributee be alive or dead. *In re Howard*, 80 Vt. 489, 495, 68 A. 513

Vt. St. 1904, c. 30, s. 2. Every person other than such as are exempted in the preceding section from the payment of the taxes imposed by this act who shall

acquire title to real estate or any interest therein by voluntary conveyance or deed of gift made or intended to take effect in possession or enjoyment upon or after the death of the grantor, or who shall by voluntary conveyance or by gift acquire title to personal estate or any interest therein made or intended to take effect and possession or enjoyment upon or after the death of the grantor or donor, shall pay to the state a tax of five per centum of the value in money of such real or personal estate or the interest therein conveyed. Such tax shall be a first lien on the real or personal estate thus conveyed or given until such tax shall have been paid in full.

Vt. St. 1904, c. 30, ss. 3 and 4, provide for the deduction of taxes lawfully paid to other states.

Vt. St. 1904, c. 30, s. 5, exempts bequests to maintain burial lots.

Vt. St. 1904, c. 30, ss. 6-54, provide for the fixing of the tax and its collection.

**S. 81. Application to estates in litigation.** The first seventy-nine sections of this act in so far as they shall pertain to a tax imposed by this act upon a person, corporation, society or institution that shall in any manner hereinbefore provided receive property or any interest therein passing from a deceased person, shall also apply to all persons who deceased prior to the enactment hereof but whose estates shall not have been at the date of such enactment decreed or distributed; provided, however, that if any part of an estate has been lawfully paid or decreed prior to the enactment hereof such part so paid or decreed shall not be affected by this act, and further provided that said last named section shall not in any manner apply to an act done or performed prior to the enactment hereof for which a penalty is therein provided.

### **Effect on Prior Law.**

The testator died June 1, 1904, and Vermont statute 1904, c. 30, took effect December 9, 1904. It was claimed that the estate was not affected by the statute of 1904, but the court says that so far as the provisions of the two acts are the same or similar, the later act is to be construed as a continuance of the other, and all acts or parts of acts inconsistent with the provisions of the later act were repealed. But such repeal was not to affect the validity of a tax accrued or accruing at the time of the enactment thereof.

But the court says that since the law of 1896 did not include debts due from non-residents, the tax here in controversy was not accrued nor was it accruing before the provisions of the new act, including such debts, took effect, and therefore the estate was subject to the statute of 1904. *In re Howard*, 80 Vt. 489, 68 A. 513.

### **THE PUBLIC STATUTES AND AMENDMENTS.**

Vt. Public St. of 1906, c. 38, codifies the existing law.

Vt. Public St. 1906, s. 6319, repealed Vt. St. 1896, No. 46, and 1904, No. 30.

Vt. St. 1908, No. 31, approved January 28, 1909, amends Public St. ss. 822, 824, 857.

Vt. St. 1908, No. 31, s. 4, provides that no reductions in the account of debts and expenses of administration shall be made except such debts and expenses have been allowed by the court having jurisdiction of the estate.

Vt. St. 1910, No. 55, approved January 28, 1911, amends Public St. ss. 822, 876, 878, 879.

Vt. St. 1910, No. 56, approved January 27, 1911, amends Public St. s. 833.

## THE PRESENT ACT.

### Public Statutes of 1906, c. 38, as Amended.

**S. 821. Definitions.** The word "legatee," when used in this chapter, shall extend to and include any devisee or distributee named in a will; the word "legacy," all devises and bequests; and the words "share" or "distributive share," all real or personal property or any interest therein passing under the laws of descent or the intestate laws of this state, or any other state or government; provided that such construction shall not be required, if the same would thereby be repugnant to the manifest intention of the general assembly.

**S. 822. Taxable transfers.** Every person other than the father, mother, husband, wife, lineal descendant, the wife or widow of a son, the husband of a daughter, a stepchild, a child adopted as such during his minority in conformity with the laws of this state, a child of a stepchild or of such adopted child, bishop in his ecclesiastical capacity for religious uses within this state, or a city or town for cemetery purposes; and every charitable, educational or religious society or institution other than one created and existing under and by virtue of the laws of this state and having its principal office herein, that shall receive in trust or otherwise a legacy or distributive share consisting of or arising from property or an interest therein passing by will, the law of descent or the decree of a court in this state, from a deceased person who owned such property at the date of his decease, shall, except as otherwise provided in this chapter, pay to the state a tax of five per cent of the value in money of such legacy or distributive share. (As amended by St. 1908, c. 31, s. 1, and St. 1910, c. 55, s. 1.)

[See notes to the Acts of 1896 and 1904, *ante*, pp. 1143, 1145.]

**S. 823. Transfers to take effect on death.** Every person, unless one of a class exempted in the preceding section, who acquires title to real or personal estate or any interest therein by voluntary conveyance or gift made or intended to take effect in possession or enjoyment upon or after the death of the grantor or donor, shall pay to the state a tax of five per cent of the value in money of such real or personal estate, or the interest therein conveyed. Such tax shall be a first lien on the real or personal estate thus conveyed or given, until such tax is paid in full.

**Foreign Taxes Deducted.**

**S. 824. General provisions.** If a transfer or other similar tax has been lawfully paid to another state or to a government other than the United States, for or on account of an assignment or transfer of stocks, obligations, securities or other evidences of indebtedness, or for or on account of the collection, delivery or assignment of securities, deposits or other assets, and such stocks, obligations, securities, other evidences of indebtedness, deposits or assets, or the proceeds thereof, shall in whole or in part be included in any legacy or distributive share decreed subsequent to the ninth day of December, 1904, by a probate court of this state to a legatee or heir liable to the tax imposed by section eight hundred twenty-two, such legatee or heir shall be liable to pay to this state under the provisions of said section only such part of the tax therein imposed as will make the entire tax both within and without this state, based on such portion of a legacy or distributive share taxed in such other state or government, equal to five per cent of the total value thereof, to be determined as provided in this chapter. (As amended by St. 1908, c. 31.)

**Discount.**

The tax was assessed in the state of New York on certain New York property and the estate paid the tax within six months, and therefore obtained a rebate of five per cent. The court holds that the estate can deduct before paying the Vermont tax only what had been actually paid in New York and not the New York tax as assessed. *In re Meadon*, 81 Vt. 490, 70 A. 1064.

**S. 825. Official receipt required.** No rebate from the full amount of the tax required by the third preceding section shall be allowed by the probate court under the provisions of the preceding section, unless an official receipt or other competent evidence, showing the amount so paid to such other state or government, the date of payment, the rate, the valuation of the property upon which such tax was computed and a brief description thereof, is presented to the probate court.

[This section refers to section 824.]

**S. 826. Bequests to Maintain Burial Lots Exempt.** Towns, cities, villages, trustees, officials therein and official boards, corporations, associations and persons that receive a legacy in trust or otherwise, the use, income or principal sum of which is to be used for the sole purpose of purchasing, maintaining, caring for or beautifying a burial lot owned by the decedent, or wherein he or any of his kin shall be interred, or for the sole purpose of erecting, caring for or maintaining a monument or other structure thereon, shall be exempt from the payment of taxes imposed by this chapter.

**Taxes, How Made Payable.**

**S. 827. Administrator, etc., to deduct.** An administrator, executor or trustee having in charge or in trust a legacy or distributive share passing to a legatee or heir liable to a tax imposed by this chapter, shall, before paying or delivering the same to such legatee or heir, deduct the tax therefrom or collect it from such legatee or heir.

**S. 828. Sale of legacy for tax.** In case the tax cannot be deducted therefrom and the legatee or heir neglects or refuses to pay such tax, the probate court may, in the same manner as administrators and executors are licensed to sell real and personal estate for the payment of debts, license such administrator, executor or trustee to sell a part or all of a legacy or distributive share belonging to a person liable to a tax imposed by this chapter, for the payment of such tax.

**S. 829. Legacy delivered when tax is paid; lien.** An administrator, executor or trustee shall not deliver any specific legacy, property or the proceeds thereof to any legatee or heir liable to such tax, until such tax has been deducted or collected as aforesaid. Conveyances, mortgages, attachments, sales or assignments of such legacy, share, the proceeds thereof, or any interest therein, shall be subject to the taxes imposed by this chapter; and such taxes shall be a lien on such legacies, distributive shares and the proceeds thereof, until the same are fully paid.

**S. 830. Liability for tax; collection; report.** A person having in charge or in trust as administrator, executor or trustee, a legacy or distributive share passing to a person in the manner mentioned in section eight hundred and twenty-two, shall be liable for the taxes imposed by this chapter, with interest as hereinafter provided, until the same are fully paid. The administrator, executor or trustee shall collect the tax due the state from a person to whom real estate passes in the manner mentioned in such section from the decedent of whose estate he is administrator, executor or trustee; but if such administrator, executor or trustee is unable to collect such tax before his final account is allowed, he shall make a full and detailed report to the commissioner of state taxes, showing the names of the persons liable to such unpaid tax and a description of the real estate on account of which such tax is due.

#### **Legacy, When Made a Charge upon Property.**

**S. 831. Tax to be deducted from legacy; lien; payment.** When a legacy passing to a legatee liable to such tax is charged upon or payable out of any real or personal estate devised to any person, said person shall, before paying such legacy, deduct such tax therefrom and pay it to the administrator, executor or trustee of the estate of which such real and personal estate is a part. Such tax shall be a lien upon such real or personal estate, until the same is paid. Payment thereof may be enforced by the administrator, executor or trustee in the manner provided in the third preceding section.

#### **Probate Court Proceedings.**

**S. 832. Final settlement of account of an administrator, etc.** A final settlement of the account of an administrator, executor or trustee shall not be allowed by a probate court, unless such account shall show and said court shall find that the taxes imposed by the provisions of this chapter are paid, and that one of the triplicate receipts issued by the state treasurer therefor is filed in said probate court.

**S. 833. Jurisdiction of probate court.** 1. The probate court having either principal or ancillary jurisdiction of the settlement of the estate of a



decendent shall, except as otherwise provided in this chapter, hear and determine all questions relating to the taxes hereby imposed and the value of all legacies and distributive shares upon which such taxes are computed.

2. In case it shall be made to appear to a probate court that the amount of a tax heretofore or hereafter fixed by it is less than or in excess of the amount imposed by the provisions of this chapter, it may in its discretion upon application of said commissioner or of the administrator or executor of the estate making such payment, and upon reasonable notice in writing thereto, determine the amount which should have been thus imposed and accordingly modify or amend its decree therefore made. (As amended by St. 1910, c. 56.)

#### **Appeals.**

S. 834. **Who may appeal.** A legatee, heir or beneficiary affected by a decree of the probate court respecting the taxes imposed by this chapter, the administrator, executor or trustee of an estate of which a legacy or distributive share passing to a person liable to the taxes imposed is a part, and the commissioner of state taxes in behalf of the state, may appeal to the county court from such orders and decrees of said probate court.

#### **Proceedings in Supreme Court.**

S. 835. **Probate court to certify finding and decree.** Whenever the legal construction of a part of this chapter is in dispute and the facts relating thereto have been determined by the probate court wherein the estate is being administered, the judge of such court shall, if no appeal is taken, upon the written application of the administrator, executor or trustee of such estate and the commissioner of state taxes, filed therein before the time for an appeal has expired, certify to the supreme court such part of its finding and decree as relates to such construction, together with the contentions of the parties relating thereto, which shall be filed with such application.

S. 836. **Certificate; hearing; judgment.** Such certificate shall be placed on file in the office of the clerk of the county wherein such probate district is located, on or before twenty-five days from the date of such finding or decree; and thereupon the supreme court shall have jurisdiction of all questions of law presented thereby; and the same shall be heard and determined, as if the cause had been passed to said court upon the *pro forma* judgment of a county court to which such cause might have been appealed. The final decision and judgment therein shall be certified to the probate court in the same manner and with the same legal effect as provided in section two thousand nine hundred and eighty-eight.

#### **Costs.**

S. 837. **Orders.** In proceedings therein, involving questions of taxation under the provisions of this chapter, the county or supreme court shall, upon final hearing, make such orders respecting the payment of costs as, in the opinion of said court, are just and equitable. The auditor of accounts shall draw an order for the costs to be paid by the state, upon receipt of a bill thereof signed by the person taxing the

**Valuation by Probate Court.**

**S. 838. Determination upon application; notice.** The probate court having jurisdiction of an estate may, at any time, or upon the application of the commissioner of state taxes or a legatee, heir, administrator, executor or trustee of such estate, determine, so far as possible, the value of all legacies and distributive shares passing to persons who are liable to the tax imposed by this chapter, and the amount of taxes due therefrom. Notice of such application and of the time and place of the hearing shall be given in the same manner as in case of the settlement of accounts by administrators and executors.

**S. 839. Notice as to findings and decrees.** Said probate court shall notify the commissioner of state taxes in writing, upon blanks to be furnished by him for that purpose, of its findings and decrees respecting the matter specified in the preceding section, and the date on which such decree was made.

**S. 840. How determined.** The value of a legacy or distributive share mentioned in section eight hundred and twenty-two, except as otherwise provided in this chapter, shall be its actual market value in money at the expiration of one year from the death of the decedent; but if such legacy or share is sooner paid or delivered, the valuation thereof shall be determined as of the date at which the person entitled to the same comes into or is entitled to the possession or the beneficial use thereof.

**S. 841. Same.** The value of property passing by voluntary conveyance or gift mentioned in section eight hundred and twenty-three, except as otherwise provided in this chapter, shall be its market value in money at the date the person entitled to the same comes into or is entitled to the possession or the beneficial use thereof.

**Valuation by Appraisers. .**

**S. 842. Appraisers.** Upon the written application signed by the commissioner of state taxes, or by a legatee or heir liable to a tax on account of a legacy or distributive share passing to him in the manner designated in section eight hundred and twenty-two, or by the administrator, executor or trustee of an estate of which such legacy or share is a part, or by the grantee or donee of property passing in the manner designated in section eight hundred and twenty-three, the probate court wherein such estate is being administered or for the district where a part of the property passing in the manner designated in section eight hundred and twenty-three is situated, if no letters of administration have been granted upon the estate of the grantor or donor therein mentioned, or for any district wherein a corporation mentioned in section eight hundred and seventy-six, or a savings bank or trust company or any corporation having securities or assets mentioned in section eight hundred and seventy-eight has its principal place of business in this state, or within which a person holding such assets or securities resides, may, in its discretion, appoint not more than three disinterested persons, to determine, upon hearing or otherwise, the value of all or a part of the real estate or personal property, or of an interest therein, passing to a person liable to a tax imposed by this chapter.

S. 843. **Warrant to appraisers.** Said probate court shall issue a warrant to said appraisers and shall therein designate what part of such real and personal property, or interest therein, shall be appraised by them, and shall therein fix the time within which such warrant shall be returnable to said court.

S. 844. **Oath; notice.** Said appraisers shall, before entering upon the performance of their duties, be duly sworn and shall give such notice to the parties as said probate court orders.

S. 845. **Authority.** An appraiser shall have the same authority to compel the attendance of witnesses, and to administer oaths thereto, that judges of probate have.

S. 846. **Returns; proceedings.** Said appraisers shall make returns of their findings to the probate court within the time mentioned in such warrant; and said probate court may, in its discretion, accept or reject a part or all of such findings. If such report is rejected, the probate court may appoint new appraisers to determine such valuation, or it may determine such valuation upon hearing.

S. 847. **Fees.** The fees of said appraisers shall be fixed by the probate court and shall be paid by the administrator, executor or trustee of the estate, if the property so appraised is a part or all of an estate in which letters of administration have been granted within this state. In case no letters of administration have been granted, the fees of said appraisers, when fixed as aforesaid, shall be paid by an order drawn by the auditor of accounts.

#### **Valuation by Agreement.**

S. 848. **How made.** Whenever it is necessary under the provisions of this chapter to establish the value of property or an interest therein, the commissioner of state taxes may agree upon such valuation with the administrator, executor or trustee of an estate of which such property is a part. This section shall apply to any agreement made with a foreign administrator, executor or trustee.

S. 849. **Agreement to be in writing, when.** In cases where the valuation of a part or all of the property mentioned in the preceding section or for any interest therein has been established by agreement pursuant to the preceding section, the commissioner of state taxes and said administrator, executor or trustee shall cause such agreement to be written, and specify therein the various items of property and the value of each item.

S. 850. **Agreement to be filed where.** One copy of the agreement specified in the preceding section shall be filed in the office of the commissioner of state taxes, one with the state treasurer, and one in the probate court, if any, having jurisdiction of such estate within this state. In case a foreign administrator, executor or trustee is a party to such agreement, one copy thereof shall be delivered to him.

S. 851. **Agreement may be set aside.** The probate court shall have power to affirm or set aside the agreement mentioned in the three preceding sections.

in all estates within its jurisdiction; and the state treasurer may, in his discretion, set aside any such agreed statement of valuation to which a foreign administrator, executor or trustee is a party, if he is satisfied that the interests of the state so require.

**S. 852. Same.** If the agreed statement of valuation hereinbefore mentioned is set aside for any cause, the value of such property shall be determined as hereinbefore otherwise provided.

#### **Valuation of Life Estate.**

**S. 853. How determined.** When it becomes necessary for the purpose of computing a tax imposed by this chapter to determine the value at the time such tax accrues of an interest in property arising from the bequest or devise of the use or income thereof for the term of an individual life or lives, or involving the contingency of the duration of such life or lives, it shall be determined according to the "American Experience Table of Mortality," with interest at the rate of three and one-half per cent per annum.

**S. 854. Same.** When it becomes necessary for the purpose of computing a tax imposed by this chapter to determine the value at the time such tax accrues of an annuity or an interest in property arising from the bequest or devise for the use or income thereof for a term of years or for a period in which the life duration or life contingency is not involved, the value shall be determined by discount tables computed at the rate of three and one-half per cent per annum.

**S. 855. Duties to probate court.** In making the computation specified in the two preceding sections, the probate court shall determine the amount of such yearly income, whether for life or for a term of years, or the probable average annual value of the use or income of such estate for life or for a term of years.

**S. 856. Duties of commissioner of state taxes.** The commissioner of state taxes shall procure suitable tables for the purposes of this chapter and may cause the same or a part thereof to be printed in convenient form with proper explanation for the use of the probate courts within this state, and such tables shall be used in computing the value of yearly incomes or life estates mentioned in this chapter. The auditor of accounts shall draw his order to defray the expenses incurred under this section.

**S. 857.** Whenever a person bequeaths or devises the use of property for the term of a natural life or lives, or for a term of years, or gives or conveys such use in the manner provided in section eight hundred twenty-three, to or for the use of any person, society, institution or corporation exempt from the payment of a tax imposed by this chapter, and bequeaths, devises, gives or conveys the remainder to a person, society, institution or corporation subject to the taxes hereinbefore imposed, the value of the prior estate shall, in the manner hereinbefore provided, be deducted from the appraised value of such property; and the person entitled to such remainder shall be liable to the tax imposed by this chapter. Such tax shall become due and payable at the same time that a tax would become due and payable, if the entire property, instead of a remainder therein, had passed to the person receiving such remainder. (As amended by St. 1908, c. 31.)

**Legacy to an Executor.**

S. 858. **Liable to tax, when.** When a decedent appoints one or more executors or trustees and, in lieu of their compensation, makes a bequest or devise of property to them which would otherwise be liable to a tax imposed by this chapter, or appoints them his residuary legatees, and such bequests, devises or residuary legacies exceed what would be a reasonable compensation for their services, such excess shall be liable to the taxes imposed by this chapter. The probate court having jurisdiction of their accounts shall determine what would have been such reasonable compensation, and the amount of such excess, if any.

**Receipts on Payment of Taxes.**

S. 859. **State treasurer to issue; filing.** The state treasurer shall, upon receiving the amount of a tax under the provisions of this chapter, issue receipts in triplicate to the person paying the tax, who shall forthwith file one copy thereof with the auditor of accounts, one with the commissioner of state taxes and one with the probate court wherein the estate is administered; provided that the person paying such tax upon property passing in any other manner than that described in section eight hundred and twenty-two may retain one copy of such receipt instead of filing the same with the probate court.

**Method of Refunding Taxes.**

S. 860. **Duties of commissioner of state taxes.** Whenever the state treasurer has received money on account of a tax imposed by this chapter in excess of the amount finally fixed by a court having jurisdiction thereof, or in excess of the amount otherwise determined under the provisions of this chapter, the commissioner of state taxes may certify the amount of such excess and the name of the person entitled thereto to the auditor of accounts, who shall thereupon draw an order for such excess, in favor of the person designated in such certificate. Said commissioner shall execute such certificate in quadruplicate and shall deliver one copy thereof to the person entitled to such rebate, file one with the state treasurer and one with the auditor of accounts and retain one for his own files.

**Time of Payment of Taxes.**

S. 861. **Generally.** Taxes imposed by this chapter, unless otherwise provided, shall be payable to the state treasurer on or before the expiration of two years from the date of the death of the decedent.

S. 862. **On legacies or distributive shares.** When legacies or distributive shares are delivered or paid within such two years to a legatee or heir, the taxes due on account of such legacies or shares shall be paid to the state treasurer at the time such legacies or shares are paid or delivered.

S. 863. **Probate court may extend.** A probate court administering an estate may extend the time within which a tax imposed by this chapter shall be due and payable, whenever the circumstances of the case so require.

S. 864. **Same.** If, for any reason, said probate court shall, at any time, be unable to determine the value of a part or all of such legacies or shares, or the

amount of a part or all of a tax due the state thereon, it shall, from time to time, extend the time within which such taxes shall become due and payable.

**S. 865. Same.** Whenever the probate court extends the time for assessment and payment of a tax imposed by this chapter, it shall make a record thereof and shall forthwith file with the commissioner of state taxes a statement showing the date to which such extension is made and what legacies or shares are thereby affected.

**S. 866. On transfers.** Taxes due under the provisions of section eight hundred and twenty-three shall be payable on or before the expiration of three months from the date of the death of the grantor or donor therein mentioned, unless the grantee or donee sooner enters into possession of the property acquired in the manner therein mentioned; in which case, the tax shall thereupon become payable.

#### **Inventory of Property.**

**S. 867. Duty of grantee or donee.** A person who as grantee or donee comes into the possession or enjoyment of property in the manner specified in section eight hundred and twenty-three shall forthwith file with the commissioner of state taxes a just and true inventory under oath of all such property, giving a description of the property included in such conveyances, deeds and gifts.

**S. 868. Penalty.** A person who neglects or refuses to file the inventory provided in the preceding section shall be subject to a penalty of not more than ten per cent nor less than five per cent of the value of the property which so comes into his possession or enjoyment, to be recovered in an action on this statute brought in the name of the state by the commissioner of state taxes.

#### **Interest on Taxes.**

**S. 869. When.** Taxes not paid to the state treasurer when due under the provisions of this chapter, unless the time for payment thereof has been extended by the probate court pursuant to the provisions of this chapter, shall bear interest from the date at which the same become payable until the same are paid.

#### **Reports to Commissioner of State Taxes.**

**S. 870. Duties of register of probate.** In estates wherein property may be decreed to a legatee or heir liable to a tax imposed by this chapter, the register of the probate court having jurisdiction thereof shall, at the time of granting letters of administration therein, upon blanks to be furnished by the commissioner of state taxes, report the name of the decedent, the date of his death, the name and address of the administrator or executor, and the relationship, if any, and the names of all known legatees or heirs liable to the taxes imposed by this chapter.

**S. 871. Same.** Whenever the probate court fixes a date for the determination of the amount due to the state on account of a tax imposed by this chapter, or for the determination of the value of a legacy or share passing to a legatee or heir liable to such tax, or for the determination of any matter pertaining to a tax imposed by this chapter, the register of probate shall, upon blanks furnished for

that purpose by the commissioner of state taxes, forthwith mail to said commissioner a statement showing the name of the estate, the date of such hearing, the nature thereof, whether or not the property out of which such legacy or share is to be decreed is in money or its equivalent, and, if in other property, a brief description thereof as shown by the files of said court. If such hearing is continued, notice thereof shall be given in person or by mail to said commissioner.

#### **Estates Not Administered upon.**

**S. 872. Administrator, how appointed.** If, upon the decease of a person leaving an estate passing in whole or in part to legatees or heirs liable to the taxes imposed by this chapter, no will disposing of such estate is offered for probate within the time prescribed by law and no application for administration is made within four months from the date of such decease, the commissioner of state taxes shall apply to the probate court for the appointment of an administrator of such estate.

**S. 873. Duties of probate court.** A judge or register of probate shall forthwith notify the commissioner of state taxes, upon blanks to be furnished by him, of estates mentioned in the preceding section, known to them or either of them, in which no will or application for administration is presented within the time specified.

#### **Certified Copies of Wills and Inventories.**

**S. 874. To be furnished commissioner of state taxes.** An administrator, executor, trustee or other legal representative of a decedent, appointed by a probate court within this state or by a foreign court or government, shall, when required in writing by the commissioner of state taxes, within a reasonable time after receiving such requisition and without expense to the state, furnish said commissioner a certified copy of any part or all of any record, or of the will, inventory or other document required to be filed in the court wherein the estate of which he is such administrator, executor, trustee or legal representative is being administered.

**S. 875. Failure to furnish; penalty, etc.** An administrator, executor, trustee or legal representative mentioned in the preceding section, appointed by a probate court in this state, shall forfeit to the state five dollars for each day's neglect or refusal to provide the certified copies therein specified, within a reasonable time after receiving requisition therefor; and if a foreign administrator, executor, trustee or legal representative neglects or refuses to furnish the copies therein required, no certificate shall be given by the commissioner of state taxes under the provisions of section eight hundred and eighty-two, until such certified copies are furnished and a reasonable time has thereafter elapsed.

**S. 876. Deduction of tax on estate of non-resident. I.** If a foreign administrator, executor or trustee assigns or transfers any stock or obligation in a domestic corporation, or in a foreign corporation having its principal place of business located in this state, or in a national bank located in this state, owned by a deceased non-resident at the time of his death and passing by will or the laws of descent of the state or government wherein such administrator, executor or trustee receives his appointment, to or for the use of any person other than the

father, mother, husband, wife, lineal descendant, stepchild, child adopted as aforesaid, child of a stepchild or of such adopted child, the wife or widow of a son, the husband of a daughter, a bishop in his ecclesiastical capacity for religious uses within this state, a town or city in this state for cemetery purposes, or to or for the use of a charitable, educational or religious society or institution created and existing under the laws of this state, such administrator, executor or trustee shall pay to the state a tax equal to five per cent of the value in money, at the date of such assignment or transfer, of such part or all of such stocks or obligations so passing by will or the laws of descent.

II. If such taxes are not paid on or before the date of such assignment or transfer, they shall be a lien on such stock or obligation until the same are paid.

III. In determining the amount of any tax imposed by this section, no deductions on account of debts or expenses of administration shall be made unless such debts or expenses have been allowed by the probate, surrogate or other court having original jurisdiction of said estate.

IV. The words "stock" and "obligation" as used in this section, shall be construed to include the proceeds thereof. (As amended by St. 1908, c. 31; St. 1910, c. 55.)

**S. 877. Transfer of stock before payment of tax prohibited.** A domestic corporation, or a foreign corporation having its principal place of business in this state, or a national bank located in this state, which records a transfer of a share of its stock or of its obligation, made by a foreign administrator, executor or trustee, or which issues a new certificate for a share of its stock or of the transfer of an obligation aforesaid at the instance of a foreign administrator, executor or trustee, before the taxes imposed by the preceding section are paid, shall be liable for such tax in an action upon this statute brought in the name of the state by the commissioner of state taxes.

**S. 878. Estate of non-resident.** I. If a foreign administrator, executor or trustee of a non-resident decedent, or a legatee or heir of such decedent, or an assignee of such administrator, executor, trustee, legatee or heir, collects, receives or assigns securities or assets, being in this state at the time of the death of such non-resident decedent, and belonging to him at his decease, which shall pass in whole or in part by will or the laws of the state or government wherein such foreign administrator, executor or trustee has received his appointment, to or for the use of any person other than the father, mother, husband, wife, lineal descendant, stepchild, child adopted as aforesaid, child of a stepchild or of such adopted child, the wife or widow of a son, the husband of a daughter, a bishop in his ecclesiastical capacity for religious uses within this state, or a town or city in this state for cemetery purposes, or to or for the use of a charitable, educational or religious society or institution created and existing under the laws of this state, such foreign administrator, executor or trustee, the assignee of such securities or assets, or any legatee or heir of such non-resident decedent, shall pay to the state a tax equal to five per cent of the value in money, at the date of the delivery, collection or assignment of such part or all of such securities or assets so passing by will or the laws of descent.

II. If such taxes are not paid on or before the date of such delivery, collection, or assignment they shall be a lien on such securities or assets until such taxes are paid.



**III.** In determining the amount of any tax imposed by this section, no deductions on account of debts or expenses of administration shall be made, unless such debts or expenses have been allowed by the probate, surrogate or other court having original jurisdiction of said estate. (As amended by St. 1908, c. 31, and St. 1910, c. 55.)

**Delivery of Property of Non-resident.**

**S. 879.** The securities or assets mentioned in the preceding section shall not be delivered or transferred by a person or corporation to a foreign administrator, executor or trustee of a non-resident decedent, nor to a legatee or heir of such decedent, nor to an assignee of such administrator, executor, trustee, legatee or heir, before the taxes, if any, imposed by the preceding section are paid, or the certificate mentioned in section eight hundred eighty-two is issued by said commissioner. Said commissioner, or person designated by him in writing, may at all reasonable times examine such securities or assets. (As amended by St. 1910, c. 55.)

**S. 880. Failure to give notice; liability.** Failure to mail or deliver such notice as provided in the preceding section shall render the person or corporation required to report such delivery or transfer liable in an action upon this statute, brought in the name of the state by the commissioner of state taxes, for all taxes imposed by the second preceding section.

**S. 881. Deposits not to be paid or transferred before payment of tax.** No savings bank, savings institution, trust company or savings bank and trust company shall pay a part or all of a deposit, or any interest or dividend thereon, to an administrator or executor, under the provisions of section four thousand six hundred and thirty-seven, nor transfer the same to the account of any person upon its records, unless the certificate mentioned in the following section has been delivered thereto.

**S. 882. Waiver of liability.** A certificate signed by the commissioner of state taxes certifying that an administrator, executor, trustee, legatee, heir or assignee is not liable to the taxes imposed by sections eight hundred and seventy-six and eight hundred and seventy-eight, or certifying that such taxes are paid, shall operate as a waiver or discharge of all liability to the state on the part of any person or corporation mentioned in the six preceding sections.

**Reports by Savings Banks and Trust Companies.**

**S. 883. Notice of death of non-resident depositor, etc.** A savings bank, savings institution, trust company, or savings bank and trust company shall notify the commissioner of state taxes, upon blanks to be furnished by him, of the decease of any non-resident depositor and the name and residence of any foreign administrator, executor or trustee as soon as the same is known thereto.

**S. 884. Payment of an account prohibited without consent of commissioner of state taxes.** If a savings bank, savings institution, trust company, or savings bank and trust company has notice of the death of a depositor residing within this state at the time of his decease, or has reasonable grounds for believing him to be dead, it shall not, without the consent in writing of the

commissioner of state taxes, pay or transfer upon its records a part or all of a deposit or account standing in the name of such decedent, for which an order, assignment or other instrument in writing signed by such decedent has been given, other than checks given in the ordinary course of business. Notice in writing shall be forthwith given by such corporation to said commissioner, setting forth the character of such order, assignment or other instrument, and the name and residence of the payee or assignee therein named.

**S. 885. Liability.** A savings bank, savings institution, trust company, or savings bank and trust company, that wilfully violates a provision of the first, second and fourth preceding sections, shall be liable to the state, in an action on this statute, brought in the name of the state by the commissioner of state taxes, for all taxes imposed by sections eight hundred and seventy-six and eight hundred and seventy-eight upon a person liable to the same. But no such action shall be commenced without the consent of the governor.

#### **Equity Proceedings.**

**S. 886. Commissioner may institute.** Whenever the commissioner of state taxes claims that a tax is due on account of a transfer of property in the manner described in section eight hundred and twenty-three, eight hundred and seventy-six, eight hundred and seventy-eight or eight hundred and eighty-four, he may, in the name of the state, petition the court of chancery in any county to determine the amount of any or all taxes due, as provided in such sections, and to establish such taxes as a lien upon the property passing or being transferred in the manner therein mentioned.

**S. 887. Service, how made.** Service of the petition mentioned in the preceding section may be made in the manner provided by law; and service thereof upon a foreign administrator, executor, trustee, legatee or assignee may be made by delivering a copy of such petition to the custodian of the property in this state therein named.

**S. 888. Proceedings.** A court of chancery or a chancellor shall, subject to the right of appeal to the supreme court, hear and determine such cause at a stated term of said court or during vacation, and may grant temporary and permanent injunctions restraining any or all persons or corporations mentioned in the sections named in the second preceding section, from making any transfer or other disposition of the property named therein, until all taxes imposed by this chapter and found to be due on account of the passing of such property in the manner therein mentioned are paid, and shall make all necessary orders and decrees to carry out the provisions of this chapter.

#### **Bonds and Recognizances.**

**S. 889. State not required to give.** In cases or appeals involving questions arising under the provisions of this chapter, the state shall not be required to give a bond or recognizance for costs or for an appeal, nor an injunction bond.

#### **Proceedings in Probate Court.**

**S. 890. Jurisdiction and powers.** A probate court, upon application of the commissioner of state taxes, may summon and examine, upon oath, respect-

ing any matter pertaining to a tax or penalty imposed by this chapter, an officer, stockholder, member or agent of a corporation mentioned in section eight hundred and seventy-six, eight hundred and eighty-one, eight hundred and eighty-three or eight hundred and eighty-four, or of any corporation or banking institution having its principal place of business in the probate district wherein such probate court has jurisdiction; a custodian of the securities or assets, or the proceeds thereof, mentioned in section eight hundred and seventy-eight, residing or having its principal place of business in such probate district; an administrator, executor, trustee, legatee, heir or assignee mentioned in the last named section, entitled to receive or who has received any part or all of such securities or assets, or the proceeds thereof, held by such custodian; a member or officer of a society or institution, and a person entitled to receive or who has received a part or all of such securities, assets or proceeds thereof mentioned in section eight hundred and seventy-eight from a custodian thereof residing or having its principal place of business in such probate district, or who is entitled to receive or has received, by assignment or otherwise, a part or all of a deposit mentioned in section eight hundred and eighty-one or eight hundred and eighty-four, from a banking institution having its principal place of business in such probate district; and the grantee or donee of property, or an interest therein, passing in the manner set forth in section eight hundred and twenty-three, within such probate district.

**S. 891. Summons to witnesses.** If a probate court has issued a summons for a person mentioned in the preceding section, or has examined a person therein named concerning any matter pertaining to a tax or penalty imposed by this chapter, said court shall thereupon have jurisdiction to summon and so examine any and all persons therein named, notwithstanding the residence of such person, the location of the principal place of business of a corporation specified in the preceding section, or the location of property therein specified, is in some town or city without the probate district within which said court has original jurisdiction to issue such summons and conduct such examination.

**S. 892. Issuance of letters of administration.** If, upon the examination specified in the two preceding sections, the probate court wherein such examination is had, determines that, in order to aid in the collection of a tax imposed by this chapter, an administrator should be appointed to administer upon the estate whereof property within its original jurisdiction, passing to a person liable to a tax imposed by this chapter, is the whole or a part, said probate court shall take jurisdiction of such estate and shall thereupon issue letters of administration.

**S. 893. Same; proceedings.** Whenever letters of administration are issued upon an estate mentioned in the preceding section, the probate court issuing such letters shall have jurisdiction of all property within this state belonging thereto. The same proceedings shall be had in such estate as provided by law for the settlement of an estate wherein no will is probated.

**S. 894. Production of books, records and documents.** The probate court shall have authority to require, by summons or otherwise, the production of books of account, records or documents kept or possessed by a corporation or person mentioned in the third and fourth preceding sections, concerning matters as to which information shall be required to carry out the provisions of this chapter.

**S. 895. Summons, generally.** A probate court shall have power to summon a person not hereinbefore specifically mentioned to appear before said court to give evidence therein respecting any matter or thing hereinbefore mentioned which shall be the subject of investigation; and said court may also require such person to produce in court any book of account, record or document pertinent to such investigation.

**S. 896. Witness fees.** Persons except those liable to pay a tax imposed by this chapter shall be allowed the same *per diem* and travel fees as witnesses in county court, to be paid by the state on the certificate of the commissioner of state taxes.

**S. 897. Penalty.** A person or officer designated in section eight hundred and ninety, eight hundred and ninety-one or eight hundred and ninety-five who refuses or neglects to appear before the probate court in obedience to the summons therein mentioned, or refuses to be sworn as hereinbefore provided, or neglects or refuses to produce the books, records or documents mentioned in sections eight hundred and ninety-four and eight hundred and ninety-five, or refuses to testify concerning any matter respecting which he shall be lawfully examined, shall be fined not more than five thousand dollars nor less than five hundred dollars.

#### **Reports by Listers.**

**S. 898. How made.** Listers in the several towns shall annually, within ten days after the date on which the grand list is required by law to be filed by them with the town clerk, report to the commissioner of state taxes, upon blanks to be furnished by him, the names of persons who acquired, within the year ending with the first day of April in the year in which such report is made, real or personal estate situate in such town, or an interest therein, passing from a deceased person by the laws of descent or in the manner specified in section eight hundred and twenty-three.

#### **Miscellaneous.**

**S. 899. False swearing.** A person who wilfully swears falsely to a return, report or statement, or upon an examination hereinbefore mentioned, shall be guilty of perjury.

**S. 900. Application of chapter.** The foregoing sections of this chapter, in so far as they pertain to a tax imposed upon a person, corporation, society or institution that shall, in any manner hereinbefore provided, receive property or any interest therein passing from a deceased person, shall also apply to the estates of all persons who deceased prior to December ninth, nineteen hundred and four, but whose estates were not then decreed or distributed; but if any part of such an estate has been lawfully paid or decreed prior to such date, such part shall not be affected by this chapter; nor shall this chapter apply to an act done prior to such date for which a penalty is hereinbefore provided.

**S. 901. Exception.** This chapter shall not, except as otherwise provided, affect the liability of any person, corporation, society or institution to pay taxes already accrued under the provisions of number forty-six of the acts of eighteen hundred and ninety-six, nor any proceedings affecting the same.

## VIRGINIA.

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### In General.

Virginia adopted a collateral inheritance tax in 1844. Its last legislation was in 1910, and this state now has the distinction of possessing the shortest inheritance tax law of any state. The tax is on collateral inheritances only, the rate is uniformly five per cent and there is no amount exempted. The tax is not levied on an inheritance to grandparents, father, mother, husband, wife, brother, sister or lineal descendant. Stock of Virginia corporations owned by non-residents is not taxable.

### Constitutional Limitations.

The Virginia constitution of 1850, article IV, s. 22, prescribed as follows:—

"Taxation shall be equal and uniform throughout the commonwealth, and all property other than slaves shall be taxed in proportion to its value, which shall be ascertained in such manner as may be prescribed by law."

#### Virginia Constitution, 1902, a. 13.

S. 168. All property, except as hereinafter provided, shall be taxed; all taxes, whether state, local or municipal, shall be uniform upon the same class of subjects within the territory limits of the authority levying the tax, and shall be levied and collected under general laws.

S. 169. Except as hereinafter provided, all assessments of real estate and tangible personal property shall be at their fair market value, to be ascertained as prescribed by law. The general assembly may allow a lower rate of taxation to be imposed for a period of years by a city or town upon land added to its corporate limits, than is imposed on similar property within its limits at the time such land is added. Nothing in this constitution shall prevent the general assembly, after the first day of January, nineteen hundred and thirteen, from segregating for the purposes of taxation, the several kinds or classes of property, so as to specify and determine upon what subjects, state taxes, and upon what subjects, local taxes may be levied.

## List of Statutes.

1843-44.	Statutes of Virginia,	c.	1, s.	6.
1842-43.	" "	"	c. 2, s.	9.
1843-44.	" "	"	c. 1, s.	6.
1843-44.	" "	"	c. 1, s.	7.
1843-44.	" "	"	c. 2, s.	2.
1843-44.	" "	"	c. 3, s.	1.
1843-44.	" "	"	c. 3, s.	3.
1843-49.	" "	"	c. 1, s.	1.
1848-49.	" "	"	c. 1, s.	3.
1849.	Code	" "	c. 35, s.	10.
1849.	" "	" "	c. 35, s.	42.
1849.	" "	" "	c. 39, s.	6.
1849.	" "	" "	c. 39, s.	12.
1849.	" "	" "	c. 40, s.	3.
1852.	" "	" "	c. 17, s.	17.
1852.	" "	" "	c. 17, s.	20.
1852-53.	Statutes	" "	c. 8, s.	16.
1853-54.	" "	" "	c. 2, s.	15.
1853-54.	" "	" "	c. 2, s.	19.
1855-56.	" "	" "	c. 9, s.	30.
1859-60.	" "	" "	c. 1, s.	9.
1859-60.	" "	" "	c. 1, s.	38.
1860.	Code	" "	c. 35, s.	9.
1860.	" "	" "	c. 35, s.	38.
1860.	" "	" "	c. 39, s.	5.
1860.	" "	" "	c. 39, s.	11.
1861-62.	Statutes	" "	c. 1, s.	18.
1863.	Code	" "	c. 1, s.	15.
1863.	" "	" "	c. 1, s.	23.
1863-64.	Statutes	" "	c.	1.
1864-65.	" "	" "	c. 39, s.	33.
1865-66.	" "	" "	c. 1, s.	20.
1865-66.	" "	" "	c. 3, s.	3.
1865-66.	" "	" "	c. 3, s.	18.
1866-67.	" "	" "	c. 64, s.	3, p. 861.
1869-70.	" "	" "	c. 45, s.	18.
1869-70.	" "	" "	c. 226, s.	3.
1869-70.	" "	" "	c. 226, s.	13.
1870-71.	" "	" "	c. 193, s.	3.
1871-72.	" "	" "	c. 385, s.	3.
1873.	Code	" "	c. 33, s.	19.
1873.	" "	" "	c. 35, s.	3.
1873.	" "	" "	c. 36, s.	1.
1873.	" "	" "	c. 36, s.	7.
1874.	" "	" "	c. 240, s.	21.
1874.	" "	" "	c. 240, s.	22.
1874-75.	Statutes	" "	c. 206, s.	20.
1874-75.	" "	" "	c. 239, s.	12.

- 1874-75. Statutes of Virginia, c. 239, s. 13.  
 1875-76. " " " c. 161.  
 1875-76. " " " c. 162, s. 12.  
 1875-76. " " " c. 162, s. 13.  
 1881-82. " " " c. 119, s. 12.  
 1881-82. " " " c. 119, s. 13.  
 1883-84. " " " c. 389.  
 1883-84. " " " c. 450, s. 12.  
 1883-84. " " " c. 513.  
 1895-96. " " " c. 334.  
 1897-98. " " " c. 539.  
 1897-98. " " " c. 562.  
 1903. " " " c. 148, s. 12.  
 1903. " " " c. 148, s. 44.  
 1904. Pollard's Code of Virginia, Vol 2, p. 2219, Clause 44, s. 457.  
       Constitution of Virginia. See Pollard's Code of Virginia, Vol. 1, s.  
       183, of Constitution, Clause G.  
 1910. Pollard's Virginia Code, Supplement, Vol. 3, p. 530, s. 44.  
 1910. Statutes of Virginia, c. 148, p. 229.

**The history of the Virginia legislation** is traced as follows:—

Session Laws of 1843-44, p. 9, s. 1.

Code of 1849, c. 39, s. 6.

The omission from the revenue law of the tax in 1855-56 operated as a repeal of the statute. The law was again enacted in March 28, 1863, s. 15.

The tax was omitted from the general tax law until 1867, when it was again enacted by the session laws 1866-67, c. 64, s. 3. *Miller v. Commonwealth*, 27 Gratt. (Va.) 110.

## THE EARLY STATUTES.

Va. St. 1687 imposed a fee of two hundred pounds of tobacco and casque on the issuance of probates and letters of administration. [Burke, History of Virginia, Vol. II, p. 200. See West on Inheritance tax, p. 104.]

Va. St. 1843-44, c. 1. Passed January 26, 1844.

S. 6. Be it further enacted, That all estates inherited by, or devised or bequeathed to any other person or persons (or incorporated bodies) than a father, mother, brother, sister, husband, wife, child or lineal descendant, shall be subject to a tax of two per centum, on every hundred dollars of the clear value of such estate, to be ascertained, collected and accounted for in the mode which shall be prescribed by law.

Va. St. 1843-44, c. 3. Passed February 6, 1844.

AN ACT PRESCRIBING THE MODE OF ASCERTAINING AND COLLECTING THE TAX ON COLLATERAL INHERITANCES, devises and bequests, and amending the act passed March 28, 1843, prescribing the mode of ascertaining certain subjects of taxation.

S. 1. Be it enacted by the general assembly, That from and after the first, day of March next, all estates, real, personal and mixed, of every kind whatsoever, passing from any person who may die seired or possessed of such estate, being within this commonwealth, either by will or under the intestate laws thereof, to any person or persons, or to bodies politic and corporate, in trust or otherwise, other than to or for the use of a father, mother, husband, wife, brother, sister, children, or lineal descendants, born in lawful wedlock, shall be and they are hereby made subject to a tax or duty imposed by law, on every hundred dollars of the clear value of such estate or estates, and at and after the same rate for any less amount, to be paid to the use of the commonwealth; and all executors, and administrators, and their sureties, shall only be discharged from liability for the amount of any or all such duties or taxes on estates, the settlement of which they may be charged with, by having paid the same over for the use aforesaid, as herein directed: Provided, That no estate which may be valued at a less sum than two hundred and fifty dollars, shall be subject to the duty or tax.

S. 3 makes it the duty of clerks of courts to make an inventory of all real estate which may have passed from deceased persons and attach this list to the annual lists of transfers required to be furnished and the same shall constitute a lien upon estates until paid and discharged.

**Va. St. 1848-49, c. 1. Passed March 2, 1849.**

S. 1 imposes a tax of two per cent on all estates inherited, bequeathed or devised mentioned in the collateral inheritance tax law.

**Va. Code 1849, c. 35.**

S. 10 provides that the clerk of probate court should report all probates and administrations.

S. 42. Where any real estate of a decedent, of greater value than two hundred and fifty dollars, shall, by descent or devise, pass to any other person, or for any other use than to or for the use of the decedent's father or other relations enumerated in the tenth section, the commissioner shall, in addition to the annual land tax imposed upon real estate, charge thereon such specific tax as may be imposed by law in the case of such devise or descent.

**Va. Code 1849, c. 39.**

S. 6. Where any estate within this commonwealth of any decedent shall pass under his will, or the laws regulating descents and distributions to any other person or for any other use, than to or for the use of the father, mother, husband, wife, brother, sister or lineal descendant of such decedent, the estate so passing, if of greater value than two hundred and fifty dollars. shall be subject to a tax of a certain per cent.

Ss. 7-12 cover the collection of the tax.

S. 11 provides that the clerk on receiving the payment of the tax shall issue a receipt for which the representative of the estate shall pay fifty cents.

**Va. Code 1849, c. 40.**

S. 3 provides that the taxes prescribed by c. 39, s. 1, on the estate of a decedent shall be two per cent of such estate.



**Va. St. 1852, c. 17.**

S. 16 provides that the inheritance tax shall be two per cent of the estate.

S. 20, passed June 5, 1852, repeals Virginia Code, chapter 40.

**Va. St. 1853-54, c. 2, s. 15. Passed March 2, 1854.**

The tax on the estate of a decedent, prescribed by the 39th chapter of the Code of Virginia, shall be two per centum of such estate.

The Virginia collateral inheritance tax of 1854 is not a tax on property. The property tax which the framers of the constitution were contemplating in the twenty-second section was the ordinary annually recurring tax for the support of government laid upon all property whatsoever. *Eyre v. Jacob*, 14 Gratt. (Va.) 422, 430, 73 Am. Dec. 367.

**Effect of Omission to Fix Rates.**

Where the testator died in June, 1855, the inheritance tax was due according to the rate prescribed by the act of March 2, 1854, notwithstanding the legislature had omitted to fix any rate in the tax law of March 18, 1856. The failure of the legislature to fix a rate in 1856 without any repeal of the previous laws prescribing the tax and fixing its rate, could not operate as a release of a tax accrued in 1855.

The provisions of the code and of the act of March 2, 1854, are permanent provisions and must remain in force until they are expressly repealed or replaced by other provisions intended to be substituted. *Eyre v. Jacob*, 14 Gratt. (Va.) 422, 439, 73 Am. Dec. 367.

**Va. St. 1853-54, c. 2. Approved March 2, 1854.**

S. 19 repeals the Code of Virginia, c. 40.

**Repeal by Implication.**

The court holds that the Virginia statute of March 18, 1856, imposing taxes, is a perfect tax law imposing all taxes intended to be imposed for the support of the government, but it omitted the tax on collateral inheritances for the purpose of discontinuing it, and therefore it repealed by implication the fifteenth section of the act of 1853-54. *Fox v. Commonwealth*, 16 Gratt. (Va.) 1.

**Va. St. 1859, c. 1. Passed March 30, 1860.**

S. 9. Where any real estate of a decedent shall under his will or by descent pass to any other person, or for any other use than to or for the use of the father,

mother, husband, wife, brother, sister or lineal descendant of such decedent, the clerk of the court in which such will is recorded, and the clerk of the court of the county or corporation in which any real estate is situate, upon ascertaining the fact, shall report the same to the commissioner for the district in which such real estate may be.

S. 38. Where any real estate of a decedent, of a greater value than two hundred and fifty dollars, shall, by descent or devise, pass to any other person, or for any other use than to or for the use of the decedent's father or other relations, enumerated in the ninth section of this act, the commissioner shall, in addition to the annual land tax imposed upon such real estate, charge thereon a specific tax of two per centum on said estate.

**Va. Code 1860, c. 35.**

S. 9. Where any real estate of a decedent shall under his will or by descent pass to any other person, or for any other use than to or for the use of the father, mother, husband, wife, brother, sister or lineal descendant of such decedent, the clerk of the court in which such will is recorded, and the clerk of the court of the county or corporation in which any such real estate is situate, upon ascertaining the fact, shall report the same to the commissioner for the district in which such real estate may be.

S. 38. Where any real estate of a decedent, of a greater value than two hundred and fifty dollars, shall, by descent or devise, pass to any other person, or for any other use than to or for the use of the decedent's father or other relations, enumerated in the ninth section of this act, the commissioner shall, in addition to the annual land tax imposed upon such real estate, charge thereon a specific tax of two per centum on said estate.

**Va. Code 1860, c. 39.**

S. 5. Where any estate within this commonwealth of any decedent shall pass under his will, or the laws regulating descents and distributions, to any other person, or for any other use, than to or for the use of the father, mother, husband, wife, brother, sister or lineal descendant of said decedent, the estate so passing, if of greater value than two hundred and fifty dollars, shall be subject to a tax of a certain per centum.

S. 11 imposes a penalty on any personal representative failing to pay the inheritance tax.

**Va. St. 1861, c. 1. Passed April 3, 1861.**

S. 12. On the estate of a decedent, which passes under his will, or by descent to any other person, or for any other use than to or for the use of the father, mother, husband, wife, brother, sister, nephew, niece or lineal descendant of such decedent, there shall be a tax of two per centum of such estate.

**Va. St. 1863, c. 1. Passed March 28, 1863.**

S. 15. On the estate of a decedent, which passes under his will or by descent to any other person, or for any other use than to or for the use of the father, mother, husband, wife, brother, sister, nephew, niece, or lineal descendant of such decedent, there shall be a tax of three per centum of such estate.

**Va. St. 1863-64.** Passed March 3, 1864.

C. 1 suspends until January 31, 1865, the operation of the revenue statute of March 28, 1863.

**Va. St. 1865-66, c. 1.** Passed February 15, 1866.

S. 20. If any estate of a decedent shall, under his will or by descent, pass to any person other than to his lineal descendants, or his father, mother, husband, wife, brother, sister, nephew or niece, or to or for their use, the clerk of the court in which the will is recorded, and the clerk of the court of the county or corporation in which such estate is situate, or in which the persons, or any of them taking the same, reside, upon ascertaining the fact, shall report the same to the proper commissioner of the revenue. On such estate the commissioner shall, in addition to the annual tax, charge a specific tax to the person or persons taking under the will or by descent as aforesaid.

**Va. St. 1865-66, c. 3.** Passed February 28, 1866.

S. 3. Upon any estate of a decedent, which shall pass by his will, or upon his intestacy, to any other than to his lineal descendants, or his father, mother, husband, wife, brother, sister, nephew or niece, two per centum upon the value or amount thereof.

The collateral inheritance tax was imposed in Virginia in 1849, was abolished in 1855 and was reimposed in 1863. *In re Howard*, 5 Dem. Surr. 483, 493.

**Va. St. 1866-7, c. 64.** Passed April 20, 1867.

S. 3. Upon any estate of a decedent, which shall pass by his will, or upon his intestacy, to any person other than his lineal descendants, or his father, mother, husband, wife, brother, sister, nephew, or niece, four per centum upon the value or amount thereof.

**Va. St. 1869-70, c. 45.** In force April, 8 1870.

S. 18. If any estate of a decedent shall, under his will or by descent, pass to any person other than to his lineal descendants, or his father, mother, husband, wife, brother, sister, nephew, or niece, or to or for their use, the clerk of the court in which the will is recorded, and the clerk of the court of the county or corporation in which such estate is situate, reside, upon ascertaining the fact, shall report the same to the proper commissioner of the revenue. On such estate the commissioner shall, in addition to the annual tax, charge a specific tax to the person or persons taking under the will or by descent, as aforesaid.

**Va. St. 1869-70, c. 226.** Approved July 9, 1870.

S. 3. Upon any estate of a decedent which shall pass by his will, or upon his intestacy, to any person other than his lineal descendants, or his father, mother, husband, wife, brother, sister, nephew, or niece, six per centum upon the value or amount thereof.

**Va. St. 1870-71, c. 193.**

S. 3 imposes a tax of six per cent excepting on lineals or the father, mother, husband, wife, brother, sister, nephew or niece.

**Va. St. 1871-72, c. 385. Approved April 5, 1872.**

S. 3 imposes a tax of six per cent except on lineals, or the father, mother, husband, wife, brother, sister, nephew or niece.

**Va. Code 1873, c. 33.**

S. 19 provides for a report by the clerk of the court to the proper authorities of cases where the inheritance tax is due.

**Va. Code 1873, c. 35.**

S. 3. Upon any estate of a decedent, which shall pass by his will, or upon his intestacy, to any person other than his lineal descendant, or his father, mother, husband, wife, brother, sister, nephew, or niece, the tax thereon shall be six per centum upon the value or amount thereof.

**Va. Code 1873, c. 36.**

S. 1. Where any estate within this commonwealth, of any decedent, shall pass under his will, or the laws regulating descents and distributions, to any other person, or for any other use than to or for the use of the father, mother, wife, brother, sister, nephew or niece, or lineal descendant of such decedent, the estate so passing, if of greater value than two hundred and fifty dollars, shall be subject to a tax of a certain per centum.

S. 7 imposes on personal representatives liability for failing to pay the inheritance tax.

**Va. St. 1874, c. 240. Approved April 30, 1874.**

S. 21 requires clerks of court to report cases where the inheritance tax is due.

S. 22 imposes a tax of six per cent excepting lineal descendants or the father, mother, husband, wife or sister of the decedent. This statute also contains a provision that property conveyed by voluntary deed to evade the collateral inheritance tax shall be assessed and taxed in all respect as collateral inheritances.

**Va. St. 1874-75, c. 206. Approved March 16, 1874.**

S. 20 imposes a duty on clerks of court to report all cases subject to the inheritance tax.

**Va. St. 1874-75, c. 239. Approved March 31, 1875.**

S. 12 imposes a tax of six per cent on any transfer to others than lineals, or the father, mother, husband, wife or sister.

**Va. St. 1875-76, c. 161. Approved March 27, 1876.**

S. 1 amends the statute of March 16, 1875, section 20, as to the report of the clerks of court of estates subject to inheritance tax.

**Va. St. 1875-76, c. 162.** Approved March 27, 1876.

S. 12 provides a tax of six per cent on all persons other than lineals, or the father, mother, husband, wife, or sister of the decedent; and also provides for a tax on voluntary conveyances to evade the tax.

**Va. St. 1881-82, c. 119.** Approved April 22, 1882.

S. 12 provides a tax of six per cent except to lineals, or the father, mother, husband, wife, or sister; and provides also a tax on deeds made to evade the tax.

### **Repeal.**

Va. St. 1883-84, c. 389, in force March 11, 1884, repeals the collateral inheritance tax law and provides that all penalties hereafter incurred under it are remitted and all taxes hereafter claimed to be due are hereby remitted.

Va. St. 1883-84, c. 513, approved March 18, 1884, provides wherever a tax has been assessed under the Code of 1873, c. 36, ss. 2 and 7, which has not been paid or wherever any such tax has been paid since January 1, 1883, the party taxed may apply to the proper court to have the tax corrected as an erroneous assessment and to have the tax refunded, excepting the cost of collection. Such applications shall be made within twelve months of the passage of the act.

Va. St. 1896, c. 334, p. 367, approved February 14, 1896, levied a tax of five per cent on lineals.

Va. St. 1897-98, c. 539, approved February 28, 1898, amends Va. St. 1896, to read as follows:—

S. 1. That where any estate, within this commonwealth of any decedent shall pass under his will, or the laws regulating descents and distributions, to any other person, or for any other use than to or for the use of the grandfather and grandmother, father, mother, husband, wife, brother, sister, or lineal descendant of such decedent, the estate so passing shall be subject to a tax of five per centum on every hundred dollars' value thereof; provided, that such tax shall not be imposed upon any property used exclusively for state, county, municipal, benevolent, charitable, educational, or religious purposes.

S. 2. This act shall be in force from its passage.

Va. St. 1898, c. 539, p. 569, approved February 28, 1898, amends Va. St. 1896, s. 1, by providing an exemption on property used exclusively for state, county, municipal, benevolent, charitable, educational or religious purposes.

Va. St. 1897-98, c. 562, approved February 28, 1898, is an act especially exempting certain charitable bequests in the will of a certain decedent.

Va. St. 1903, c. 148, s. 44, provides a tax on collateral inheritances of five per cent.

Va. St. 1910, c. 148, approved March 14, 1910, amends Va. St. April 16, 1903, s. 44.

### **Probate Fees.**

Va. St. 1842-43, c. 1, s. 6, imposes a fee on the probate of a will and a grant of administration of fifty cents.

Va. St. 1842-43, c. 2, s. 9, makes it the duty of clerks of court to furnish a list for the issuance of all wills and administrations.

Va. St. 1843-44, c. 1, s. 7, provides a tax of fifty per cent on every probate or administration.

Va. St. 1843-44, c. 2. Passed February 6, 1844.

S. 2, provides that the payment of the probate or administration tax is a prerequisite to granting probate or administration.

Va. St. 1848-49, c. 1, s. 3, imposes a tax of fifty per cent upon every probate or administration.

Va. St. 1852, c. 17, s. 17, increases the tax on probate and administrations to seventy-five cents.

Va. St. 1852-53, c. 8, s. 16, imposes a tax on every will or administration, of seventy-five cents by which the tax is to be assessed under the Virginia Code chapter 39.

Va. St. 1852-53, c. 8, s. 16, provides a tax for probate and administration of seventy-five cents.

Va. St. 1853-54, c. 2, s. 16, provides a fee for probate and administration of seventy-five cents.

Va. St. 1855-56, c. 9, s. 30, makes the tax on probate and administration one dollar.

Va. St. 1859-60, c. 3, s. 44, provides a tax on every probate and administration of one dollar.

Va. St. 1861-62, c. 1, s. 18, increased the rate of probate and administration to one dollar and fifty cents.

Va. St. 1863, passed March 28, 1863, c. 1, s. 23, imposes a tax of two dollars and fifty cents on the probate of every will or grant of administration not then exempt by law.

Va. St. 1864-65, c. 39, passed March 3, 1865, s. 33, imposes on the probate of every will or administration a tax of one dollar.

Va. St. 1865-66, c. 3, s. 18, imposes a tax of one dollar on every probate or administration not exempt by law.

Va. St. 1869-70, c. 226, s. 13, imposes a tax of one dollar on every probate or administration where the estate does not exceed one thousand dollars, and for every additional one hundred dollars an additional tax of ten cents.

Va. St. 1874-75, c. 239, approved March 31, 1875, s. 13, imposes a tax on probates and administration of one dollar where the estate does not exceed a thousand dollars, and for every additional one hundred dollars an additional tax of ten cents, except where the estate is committed to a sheriff to be administered. (This exception of estates committed to a sheriff occurs in all these statutes.)

Va. St. 1875-76, c. 162, approved March 27, 1876, s. 13, imposes a tax of one dollar on every probate and administration where the estate does not exceed one thousand dollars, and for every additional one hundred dollars or fraction an additional tax of ten cents.

Va. St. 1881-82, c. 119, approved April 22, 1882, s. 13, imposes a tax of one dollar on probates and administrations not exempt by law where the estate shall not exceed a thousand dollars, and for every additional one hundred dollars an additional tax of ten cents.

Va. St. 1883-84, c. 450, s. 12, imposes a tax of one dollar on every probate and administration where the estate does not exceed a thousand dollars, and for every additional one hundred dollars an additional tax of ten cents.

Va. St. 1903, c. 148, approved April 16, 1903, s. 12, provides a tax on probates and administration of one dollar where the estate does not exceed a thousand dollars, and for every additional one hundred dollars an additional tax of ten cents.

## THE PRESENT ACT.

## Va. Code.

S. 44. (As amended by St. 1910, c. 148, approved March 14, 1910.) (a) **Tax on collateral inheritance.** Where any estate in this commonwealth of any decedent shall pass under his will, or the laws regulating descents and distributions, to any other person or for any other use than to or for the use of the grandfather and grandmother, father, mother, husband, wife, brother, sister or lineal descendant of such decedent, the estate so passing shall be subject to a tax at the rate of five per centum on every hundred dollars' value thereof: provided, that such tax shall not be imposed upon any property bequeathed or devised where such bequest or devise is exclusively for state, county, municipal, benevolent, charitable, educational, or religious purposes.

(b) The personal representative of such decedent shall pay the whole of such tax, except on real estate, to sell which or to receive the rents and profits of which he is not authorized by the will, and the sureties on his official bond shall be bound for the payment thereof.

(c) Where there is no personal estate, or the personal representative is not authorized to sell or receive the rents and profits of the real estate, the tax shall be paid by the devisee or devisees, or those to whom the estate may descend by operation of law; and the tax shall be a lien on such real estate, and the treasurer may rent or levy upon and sell so much of said real estate as shall be sufficient to pay the tax and expenses of sale, etc.

(d) Such payment shall be made to the treasurer of the county or city in which certificate was granted such personal representative for obtaining probate of the will or letters of administration.

(e) The corporation or hustings court of a city, the circuit court of a county, or city, the chancery court of the city of Richmond, the law and chancery court of the city of Norfolk, or the clerk of the circuit court of a county or city, before whom a will is probated or administration is granted shall determine the collateral inheritance tax, if any, to be paid on the estate passing by will or administration, and shall enter of record in the order book of the court or clerk, as the case may be, by whom such tax shall be paid and the amount to be paid. The clerk of the court shall certify a copy of such order to the treasurer of his county or city and to the auditor of public accounts, for which services the clerk shall be paid a fee of two dollars and fifty cents by the personal representative of the estate. The auditor of public accounts shall charge the treasurer with the tax, and the treasurer shall pay the same into the treasury as soon as collected, less a commission of five per centum. Every personal representative or other party or officer failing in any respect to comply with this section shall forfeit one hundred dollars.

(f) Any personal representative, devisee or person to whom the estate may descend by operation of law, failing to pay such tax before the estate on which it is chargeable is paid or delivered over (whether he be applied to for the tax or not) shall be liable to damages thereon at the rate of ten per centum per annum for the time such estate is paid or delivered over until the tax is paid, which damages may be recovered, with the tax, on motion of the commonwealth, and in the name of the commonwealth against him in the circuit court for the county or in the corporation court of the city wherein such tax was assessed, except that

in the city of Richmond, the motion shall be in the chancery court. Such estate shall be deemed paid or delivered at the end of a year from the decedent's death, unless and except so far as it may appear that the legatee or distributee has not received such estate, nor is entitled then to demand it.

### **Not a Property Tax.**

The collateral inheritance tax is not a tax on property. *Wytheville v. Johnson*, 108 Va. 589, 62 S. E. 328, 18 L. R. A. (N. S.) 960. *Schoolfield v. Lynchburg*, 78 Va. 366, 372.

### **Uniformity.**

It was argued that the inheritance tax lacked uniformity because it was not fixed at a sum certain, the same to all, but varied according to the value of the estate taken. The court holds that the legislature may define the class to which this tax shall be restricted, taking care to render it uniform with all those who constitute the class. *Eyre v. Jacob*, 14 Gratt. (Va.) 422, 73 Am. Dec. 367.

As the Virginia statute of 1854 is not a property tax the *ad valorem* principle cannot be applied to it and therefore it is not within the provision of the twenty-second section nor of the twenty-third section of the Virginia constitution, the twenty-second section declaring that all other property than slaves shall be taxed in proportion to its value, the twenty-third section regulating the taxation of slaves.

Judge Lee, in delivering the opinion of the court, said:—

"I do not perceive wherein the inequality and want of uniformity complained of can be said to consist. . . . The tax is equal and uniform throughout the state as far as it is susceptible of the application of the rule. It is the same everywhere upon the succession to estates of equal value of whatever subjects they may consist." *Eyre v. Jacob*, 1858, 14 Gratt. 422.

### **Classification by Relationship Valid.**

That the inheritance tax is confined to collateral inheritances and devises presents no difficulty. The discretion of the legislature to make this discrimination must be regarded as having been properly exercised. *Eyre v. Jacob*, 14 Gratt. (Va.) 422, 431, 73 Am. Dec. 367.

### **Absolute Power of State over Descents.**

"That the general assembly of Virginia in the absence of a constitutional prohibition does possess the power to tax a civil right



or privilege like this is beyond all question. This is fully embraced within its general and comprehensive power upon the subject to which allusion has already been made. But it may be deduced from the very nature of the subject itself. The right to take property by devise or descent is the creature of the law and secured and protected by its authority. The legislature might, if it saw proper, restrict the succession to a decedent's estate, either by devise or descent to a particular class of his kindred, say to his lineal descendants and ascendants; it might impose terms and conditions upon which collateral relations may be permitted to take it; or it may tomorrow, if it pleases, absolutely repeal the statute of wills and that of descents and distributions and declare that upon the death of a party his property shall be applied to the payment of his debts and the residue appropriated to public uses. Possessing this sweeping power over the whole subject, it is difficult to see upon what ground its right to appropriate a modicum of the estate, call it a tax or what you will, as the condition upon which those who take the estate shall be permitted to enjoy it, can be successfully questioned." *Per Lee, J., in Eyre v. Jacob*, 14 Gratt. (Va.) 422, 430, 73 Am. Dec. 367.

#### **Power in Legislature and not in Municipal Corporations.**

The collateral inheritance tax is not, in a proper legal sense, a tax upon property, but is a premium demanded for the privilege of transmitting an estate and the imposition of such a tax is a power inherent in the legislature in the absence of express constitutional prohibition. The legislature has the power to confer on municipal corporations the right to levy an inheritance tax, but such power cannot be inferred from the legislative authority unless such appears to be the clear legislative intent. *Schoolfield v. Lynchburg*, 78 Va. 366, 372.

The testator died June 21, 1907. On August 2, 1907, the town council of the town of her domicile passed an ordinance levying a collateral inheritance tax for the use of the town and declared that the ordinance should take effect from January 1, 1907. The authority to towns under the Virginia code of 1904, section 1043, to levy taxes allows the tax to be levied "upon any property therein, and upon such other subject as may at that time be assessed with state taxes against persons residing therein." The town charter provides that the council "may raise taxes annually by assessments in said town on all subjects taxable by the state."

The court holds, however, that the section of the code and the town charter apply only to the ordinary annually recurring tax on property and other subjects of taxation, and not to sporadic subjects which, though connected with the transmission and enjoyment of property, are casual in their nature and not recurrent. The court notes further that a collateral inheritance tax is not in any proper sense a tax on property. *Wytheville v. Johnson*, 108 Va. 589, 62 S. E. 328, 18 L. R. A. N. S. 960.

*The authority given to a town to levy taxes upon any property in said town cannot be held to confer the power to levy an inheritance tax as this is not a property tax. But this provision applies only to subjects such as are assessed annually with state taxes. Schoolfield v. Lynchburg*, 78 Va. 366, 373.

### Practice.

The levy by the sheriff for the collection of inheritance tax was attacked by injunction and the attorney general did not controvert the propriety of the proceeding in *Eyre v. Jacob*, 14 Gratt. (Va.) 422, 73 Am. Dec. 367.

*A general exemption from taxation of the property of certain charitable institutions does not include an exemption from a devise or bequest of property to such institution. Miller v. Commonwealth*, 27 Gratt. (Va.) 110, 118.

### Corporations Included under Persons.

The omission in the Virginia statute of 1867, c. 64, s. 3, of the words "bodies politic and corporate," and of the words "to any other use than to and for the use of the father," etc., cannot be taken as an indication of an intention of the legislature to exempt corporations from this tax. If the word "person" in the act embraces corporations, then these words were useless and unnecessary and were properly omitted, and the court finds that "person" here covers corporations. *Miller v. Commonwealth*, 27 Gratt. (Va.) 110, 116.

## WASHINGTON.

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### In General.

Washington adopted an inheritance tax in 1901, with important amendments in 1905 and 1907. The exemption under direct inheritances applies to the estate as a whole, not to individual shares, and if the Washington portion of the estate of a non-resident is less than this amount the estate is not taxed.

Washington taxes stock of a Washington corporation owned by a non-resident. A corporation that transfers stock or a safe deposit company that delivers over securities without notifying the state treasurer is responsible for the tax.

Washington has not hitherto made any claim for inheritance taxes where a deceased non-resident owns stock in a foreign corporation owning property within the state of Washington, but the tax commission proposes to undertake the collection of such a tax in the near future. It is not the practice to require an inventory of the entire estate before permitting the corporation to transfer stock owned by a deceased non-resident.

The twenty-five per cent tax on inheritances to non-resident aliens, which the courts had declared invalid as in conflict with certain treaties, was repealed in 1911.

### Constitutional Limitations.

#### Washington Constitution 1889, a. 7.

S. 1. All property in the state, not exempt under the laws of the United States, or under this constitution, shall be taxed in proportion to its value, to be ascertained as provided by law. . . .

S. 2. The legislature shall provide by law a uniform and equal rate of assessment and taxation on all property in the state, according to its value in money, and shall prescribe such regulations by general law as shall secure a just valuation for taxation of all property, so that every person and corporation shall pay a tax in proportion to the value of his, her or its property: Provided, That a deduction of debts from credits may be authorized. . . .

### List of Statutes.

1901. Statutes of Washington, c. 55, p. 67.  
 1899-1903. Supplement to Ballinger's Code, p. 114, s. 1655.  
 1905. Statutes of Washington, c. 93, p. 199.  
 1905. " " " c. 114, p. 222.  
 1905. " " " c. 115, p. 225, s. 2, clause 3.  
 1907. " " " c. 217, pp. 499-506  
 1907. Revenue Laws, ss. 204-221.  
 1910. Remington & Bellinger's Annotated Codes & Statutes, vol. 2, c. 7,  
 ss. 9182, 9199.  
 1911. Statutes of Washington, c. 19, p. 60.

### Power of Legislature.

It was urged that the state constitution grants to the legislature special and delegated powers, and legislative enactments, to be valid, must come within such grant of powers. But the court finds that the legislature in the absence of constitutional prohibition has the power to impose conditions by way of a tax upon legacies and successions. *State v. Clark*, 30 Wash. 439, 71 P. 20.

### THE ACT OF 1901.

**Wash. St. 1901, c. 55.** Approved March 6, 1901.

AN ACT RELATING TO THE TAXATION OF INHERITANCES and providing for disposition of same.

It was claimed that the title was not broad enough to sustain the provision which imposes a tax upon property passing by will. The court observes that the word "inheritance" is no doubt properly confined to property passing by descent or by operation of law. But by popular use this word has become applicable to cases of testacy and the court is therefore of opinion that the title of the act is broad enough to sustain the provision imposing a tax on the right of succession by will. *In re White*, 42 Wash. 360, 84 P. 831.

S. 1. All property within the jurisdiction of this state, and any interest therein, whether belonging to the inhabitants of this state or not, and whether tangible or intangible, which shall pass by will or by the statutes of inheritance of this or any other state, or by deed, grant, sale or gift made or intended to take effect in possession or in enjoyment after the death of the grantor or donor to any person in trust or otherwise, shall, for the use of the state, be subject to a tax as provided for in section two of this act, after the payment of all debts owing by the decedent at the time of his death, the local and state taxes due from the estate prior to his death, and a reasonable sum for funeral expenses, court

costs, including cost of appraisal made for the purpose of assessing the inheritance tax, the statutory fees of executors, administrators or trustees, and no other sum, but said debts shall not be deducted unless the same are allowed or established within the time provided by law, unless otherwise ordered by the judge or court of the proper county and all administrators, executors and trustees, and any such grantee under a conveyance, and any such donee under a gift, made during the grantor's or donor's life, shall be respectively liable for all such taxes to be paid by them, with lawful interest until the same shall have been paid. The inheritance tax shall be and remain a lien on such estate from the death of the decedent until paid.

### **Nature of Succession and of Tax.**

The court finds that the right to inherit or to take on the death of the owner is a creature of law and not a natural right, and that an inheritance tax is not a tax on property but one on succession. *State v. Clark*, 30 Wash. 439, 71 P. 20.

### **Validity of Exemption.**

It was claimed that an exemption of ten thousand dollars in value from estates going to lineals, which exemption was not extended to collaterals or strangers, violated the rule of equality in taxation. But the court observes that the rule invoked does not forbid a liberal classification for the purposes of taxation. The classification made here is manifestly reasonable and there is no inequality among the members of the same class. *State v. Clark*, 30 Wash. 439, 71 P. 20, 23.

### **Decree of Foreign Court.**

The testator was a resident of Maine and died there leaving property both in Maine and in Washington. The Maine court ordered distribution of the estate of the testator within the state of Maine to collateral heirs and strangers in full, and this was done leaving the entire estate in Washington to pass to lineals.

The Washington court holds that it must presume that the authority of the Maine court was rightfully exercised and cannot hold the executor here or other legatees responsible for the errors of that court. The fact that the same persons acted as executors in both states and the fact that the executors were beneficiaries under the will can make no difference.

The Washington court has no right or power to review the judgment of the court of Maine. The executor in Washington had no opportunity to collect the inheritance tax from the collateral heirs and strangers to the blood, and this court will not compel

him to pay such tax out of his own funds or out of the funds belonging to other heirs or legatees. *In re Clark*, 37 Wash. 671, 80 P. 267.

S. 2. The inheritance tax shall be and is to be levied on all estates subject to the operation of this act on all sums above the first \$10,000.00 where the same shall pass to or for the use of the father, mother, husband, wife, lineal descendant, adopted child, or the lineal descendant of an adopted child, one (1) per centum. On all sums not exceeding the first fifty thousand dollars, of three per centum, where such estate passes to collateral heirs to and including the third degree of relationship, and to six per cent where such estates pass to collateral heirs beyond the third degree or to strangers to the blood. On all sums above the first fifty thousand dollars and not exceeding the first one hundred thousand dollars, four and one-half per centum to collateral heirs to and including the third degree, and nine per centum to collateral heirs beyond the third degree or to strangers to the blood. And on all sums in excess of the first one hundred thousand dollars the tax shall be six per centum to collateral heirs to and including the third degree, and twelve per centum to collateral heirs beyond the third degree or to strangers to the blood.

S. 3. Except as to the limitations prescribed in section 2 from the inheritance tax and real property located outside the state passing in fee from the decedent owner, the tax imposed under section two shall hereafter be assessed against and be collected from property of every kind, which, at the death of the decedent owner is subject to, or thereafter, for the purpose of distribution, is brought into this state and becomes subject to the jurisdiction of the courts of this state for distribution purposes, or which was owned by any decedent domiciled within the state at the time of the death of such decedent, even though the property of said decedent so domiciled was situated outside of the state.

S. 4. In case of any property belonging to a foreign estate, which estate, in whole or in part, is liable to pay a collateral inheritance tax in this state, the said tax shall be assessed upon the market value of said property remaining after the payment of such debts and expenses as are chargeable to the property under the laws of this state. In the event that the executor, administrator or trustee of such foreign estate files with the clerk of the court having ancillary jurisdiction and with the state treasurer duly certified statements exhibiting the true market value of the entire estate of the decedent owner, and the indebtedness for which the said estate has been adjudged liable, which statements shall be duly attested by the judge of the court having original jurisdiction, the beneficiaries of said estate shall then be entitled to have deducted such proportion of the said indebtedness of the decedent from the value of the property as the value of the property within this state bears to the value of the entire estate.

Ss. 5, 6, and 7 provide for the inventory and appraisal.

S. 8 covers the assessment of the tax on life estates and estates for years.

S. 9 covers the tax on legacies to executors above compensation for their services.

Ss. 10-18 cover the assessment, collection and payment of the tax.

**AMENDMENTS.**

**Wash. St. 1905, c. 93.** Approved March 9, 1905.

**AN ACT TO EXEMPT BEQUESTS AND DEVISES**, when made for certain charitable purposes, from the payment of any tax or sum under any inheritance tax law, and remitting any such tax claimed to be due on any such bequest or inheritance.

S. 1. All bequests and devises of property within this state when the same is for one of the following charitable purposes, namely: The relief of aged, impotent (indigent) and poor people; maintenance of the sick or maimed or the support or education of orphans or indigent children shall be exempt from the payment of any tax or sum under any inheritance tax law; and any property in this state which has been devised or bequeathed for such charitable purposes, and upon which a state inheritance tax is claimed or is owing, is hereby declared to be exempt from the payment of such tax, and the same is hereby remitted.

Wash. St. 1905, c. 114, approved March 9, 1905, amends Wash. St. 1901, ss. 13 and 15.

Wash. St. 1905, c. 115, approved March 9, 1905, s. 2, clause 3, gives the state tax commission authority over the enforcement of the direct and collateral inheritance law and the collection of taxes provided for therein.

Wash. St. 1907, c. 217, approved March 16, 1907, amends Wash. St. 1901, ss. 1, 2, 4, 7, 9, 10, 12, 14, 17, 18 and repeals s. 5, and amends ss. 1 and 2 of the amendatory act of 1905.

**Wash. St. 1907, c. 217.** Approved March 16, 1907.

S. 2. That section two (2) of said act be and the same is hereby amended to read as follows: Sec. 2. The inheritance tax shall be and is to be levied on all estates subject to the operation of this act on all sums above the first \$10,000.00, where the same shall pass to or for the use of the father, mother, husband, wife, lineal descendant, adopted child, or the lineal descendant of an adopted child, one (1) per centum. On all sums not exceeding the first fifty thousand dollars, of three per centum, where such estate passes to collateral heirs to and including the third degree of relationship, and to six per cent where such estates pass to collateral heirs beyond the third degree, or to strangers to the blood. On all sums above the first fifty thousand dollars and not exceeding the first one hundred thousand dollars, four and one-half per centum to collateral heirs, to and including the third degree, and nine per centum to collateral heirs, beyond the third degree, or to strangers to the blood. And on all sums in excess of the first one hundred thousand dollars, the tax shall be six per centum to collateral heirs to and including the third degree, and twelve per centum to collateral heirs beyond the third degree or to strangers to the blood: Provided, That on all sums passing to or for the benefit of collateral relatives or strangers of the blood, who are aliens not residing in the United States, a tax of twenty-five per centum shall be levied and collected.

**Alien Tax Invalid as to Certain Treaties.**

Wash. St. 1907, c. 217, s. 2, imposed an inheritance tax of twenty-five per cent on collaterals or strangers who are aliens not residing

in the United States, and a tax of only three per cent on property passing to citizens of the United States. This provision is void as contravening the words of the treaty between the United States and Norway and Sweden of 1827, article 17, which provides that inheritances passing from one country to the other "shall be exempt from all duty called *droit de detraction* on the part of the government of the two states respectively," and that the heirs shall have the right to receive the succession without having occasion to take out letters of naturalization.

The treaty between Norway and Sweden and the United States of 1827 uses the words "goods and effects" to designate the property the treaty is applicable to, but the court holds that these words include real estate, following *Adams v. Akerlund*, 168 Ill. 632, 48 N. E. 454, and *University v. Miller*, 14 N. C. 207.

The treaty of 1827 further provided for succession by "heirs," and the court notes that this word has a technical common law meaning restricting it to those who take by inheritance only, while by the civil law it applies to all persons who are called to the succession whether by act of the party or by operation of law. As the word is used in this treaty by countries in one of which the common law prevails and the other of which the civil law prevails, there does not appear to be any reason for here attributing to it the technical meaning of either of these systems of law in preference to the other, and hence the word "heirs" includes those who receive by will as well as those who receive by operation of law. *In re Stixrud*, 58 Wash. 339, 109 P. 343, 349.

### **Alien Tax. — Validity under State Constitution.**

The question whether the Washington statute of 1907, c. 217, s. 2, is unconstitutional in view of the provisions of the Washington state constitution, in so far as it placed a higher tax on aliens than it did on residents, was not decided in *In re Stixrud*, 58 Wash. 339, 109 P. 343.

Wash. St. 1911, c. 19, abolished the twenty-five per cent tax on non-resident aliens.

### **THE PRESENT ACT.**

Wash. St. 1901, c. 55, as amended.

S. 1. **Property subject to inheritance tax.** All property within the jurisdiction of this state, and any interest therein, whether belonging to the inhabitants of this state or not, and whether tangible or intangible, which shall pass by will or by the statutes of inheritance of this or any other state, or by deed,



grant, sale or gift made in contemplation of the death of the grantor or donor, or by deed, grant, sale or gift made or intended to take effect in possession or in enjoyment after the death of the grantor or donor to any person in trust or otherwise, shall, for the use of the state, be subject to a tax as provided for in section two of this act, after the payment of all debts owing by the decedent at the time of his death, the local and state taxes due from the estate prior to his death, and a reasonable sum for funeral expenses, court costs, including cost of appraisement made for the purpose of assessing the inheritance tax, the statutory fees of executors, administrators or trustees, and no other sum, but said debts shall not be deducted unless the same are allowed or established within the time provided by law, unless otherwise ordered by the judge or court of the proper county, and all administrators, executors and trustees, and any such grantee under a conveyance, and any such donee under a gift, made during the grantor's or donor's life, shall be respectively liable for all such taxes to be paid by them, with lawful interest until the same shall have been paid. The inheritance tax shall be and remain a lien on such estate from the death of the decedent until paid. (L. '07, s. 1, p. 499.)

[See notes to the Act of 1901, *ante*, p. 1178.]

**S. 2. Rate of levy.** The inheritance tax shall be and is to be levied on all estates subject to the operation of this act on all sums above the first \$10,000.00, where the same shall pass to or for the use of the father, mother, husband, wife, lineal descendant, adopted child, or the lineal descendant of an adopted child, one (1) per centum. On all sums not exceeding the first fifty thousand dollars, or three per centum, where such estate passes to collateral heirs to and including the third degree of relationship, and to six per cent where such estates pass to collateral heirs beyond the third degree, or to strangers to the blood. On all sums above the first fifty thousand dollars and not exceeding the first one hundred thousand dollars, four and one-half per centum to collateral heirs, to and including the third degree, and nine per centum to collateral heirs, beyond the third degree, or to strangers to the blood. And on all sums in excess of the first one hundred thousand dollars, the tax shall be six per centum to collateral heirs to and including the third degree, and twelve per centum to collateral heirs beyond the third degree or to strangers to the blood: *Provided*, That on all sums passing to or for the benefit of collateral relatives or strangers of the blood, who are aliens not residing in the United States, a tax of twenty-five per centum shall be levied and collected. (L. '07, s. 2, p. 500.)

[The Washington legislature has by the statute of 1911, c. 19, repealed the inheritance tax of twenty-five per cent on estates passing to foreign heirs and left the tax on the same basis as though the heirs were citizens of the United States.]

**S. 3. Property outside state.** Except as to the limitations prescribed in section two from the inheritance tax and real property located outside the state passing in fee from the decedent owner, the tax imposed under section two shall hereafter be assessed against and be collected from property of every kind, which at the death of the decedent owner is subject to, or thereafter, for the purpose of distribution, is brought into this state and becomes subject to the jurisdiction of the courts of this state for distribution purposes, or which was owned by any decedent domiciled within the state at the time of the death of such decedent,

even though the property of said decedent so domiciled was situated outside of the state. (L. '01, s. 3, p. 68; P. C., s. 8744.)

**S. 4. Valuation of foreign estate.** In case of any property belonging to a foreign estate, which estate, in whole or in part, is liable to pay a collateral inheritance tax in this state, the said tax shall be assessed upon the market value of said property remaining after the payment of such debts and expenses as are chargeable to the property under the laws of this state. In the event that the executor, administrator or trustee of such foreign estate files with the clerk of the court having ancillary jurisdiction and with the state board of tax commissioners duly certified statements exhibiting the true market value of the entire state of the decedent owner, and the indebtedness for which the said estate has been adjudged liable, which statements shall be duly attested by the judge of the court having original jurisdiction, the beneficiaries of said estate shall then be entitled to have deducted such proportion of the said indebtedness of the decedent from the value of the property, as the value of the property within this estate bears to the value of the entire estate. (L. '07, s. 3, p. 501.)

[S. 5 repealed by St. 1907, c. 217.]

**S. 6. Payment of tax. — Sale of delinquent.** All the real estate of the decedent subject to such tax shall, except as hereinafter provided, be appraised within the time provided by law for the appraisement of decedent's estates, and the tax thereon, calculated upon the appraised value after deducting debts for which the estate is liable, shall be paid by the person entitled to said estate within fifteen months from the approval by the court of such appraisement, unless a longer period is fixed by the court, and in default thereof the court may order the same, or so much thereof as may be necessary to pay such tax, to be sold. (L. '01, s. 6, p. 70.)

**S. 7. — by estates in remainder.** When any person shall devise any real property to or for the use of the father, mother, husband, wife, lineal descendant, adopted child, or lineal descendant of such child, during life or for a term of years, and the remainder to a collateral heir or to a stranger to the blood, the court, upon the determination of such estate for life or years, shall upon its own motion or upon the application of the state board of tax commissioners, cause such estate to be appraised at its then actual market value from which shall be deducted the value of any improvements thereon or betterments thereto, made by the remainder man during the time of the prior estate, to be ascertained and determined by the appraiser and the tax on the remainder shall be paid by such remainder man within six months from the approval of the court of the report of the appraisers. If such tax is not paid within said time, the court may then order said real estate, or so much thereof as may be necessary to pay said tax, to be sold. (L. '07, s. 4, p. 501.)

**S. 8. — by estates for life.** Whenever any real estate of a decedent shall be subject to such tax, and there be a life estate or interest for a term of years given to a party other than the father, mother, husband, wife, lineal descendant, adopted child, or lineal descendant of such child, and the remainder to a collateral heir or stranger to the blood, the court shall direct the interest of the life estate or term of years to be appraised at the actual value thereof according to the rules or standards of mortality and of value commonly used in actuaries'

combined experience tables. The state treasurer is directed to obtain and publish for the use of the courts and appraisers throughout the state tables showing the average expectancy of life, and the value of annuities of life and term estates, and the present worth or value of remainders and reversions. The taxable value of life or term, deferred or future estates, shall be computed at the rate of four per cent per annum interest. Whenever it is desired to remove the lien of the inheritance tax on remainders, reversions or deferred estates, parties owning the beneficial interest may pay at any time the said tax on the present worth of such interest determined according to the rules herein fixed. Upon the approval of such appraisement by the court, the party entitled to such life estate or term of years shall within sixty days thereafter pay the tax on such life or term estate, and in default thereof the court may order such interest in such estate or so much thereof as shall be necessary to pay such tax, to be sold. Upon the determination of such life estate or term of years, unless the tax on the remainder shall have been previously paid, as provided in this section, the same provision shall apply as to the ascertainment of the amount of the tax and the collection of the same on the real estate in remainder as in like cases is provided in the preceding section. Whenever any personal estate of a decedent shall be subject to such tax, and there be a life estate or interest for a term of years given, the court shall inquire into and determine the value of the life estate or interest for the terms of years, and order and direct the amount of the tax thereon to be paid by the prior estate, and that to be paid by the remainder man, each of whom shall pay their proportion of such tax within six months from such determination, unless a longer period is fixed by the court, and in default thereof the executor, administrator or trustee shall pay the tax out of said property, as the court may direct. (L. '01, s. 8, p. 70.)

**S. 9. Executor shall pay if devisee or legatee.** Whenever a decedent appoints one or more executors or trustees and in lieu of their allowance or commission, makes a bequest or devise of property to them which would otherwise be liable to said tax, or appoints them his residuary legatees, and said bequests, devises, or residuary legacies exceed what would be a reasonable compensation for their services, such excess shall be liable to such tax, and the court having jurisdiction of their accounts, upon its own motion, or on the application of the state board of tax commissioners, shall fix such compensation. (L. '07, s. 5, p. 502.)

**S. 10. When heir or devisee shall pay tax on legacy.** Whenever any legacies subject to said tax are charged upon or payable out of any real estate, the heir or devisee, before paying the legacies, shall deduct said tax therefrom and pay it to the executor, administrator, trustee or state treasurer, and the same shall remain a charge and be a lien upon said real estate until it is paid; and payment thereof shall be enforced by the executor, administrator, trustee or state board of tax commissioners, in the same manner as the payment of the legacy itself could be enforced. (L. '07, s. 6, p. 502.)

**S. 11. Fiduciaries shall pay tax.** Every executor, administrator or trustee having in charge or trust any property subject to said tax, and which is made payable by him, shall deduct the tax therefrom, or shall collect the tax thereon from the legatee or person entitled to said property, and he shall not deliver any

specified legacy or property subject to said tax to any person until he has collected the tax thereon. (L. '01, s. 11, p. 72.)

**S. 12. Taxes payable to state treasurer. — Interest.** All taxes imposed by this act shall be payable to the state treasurer, who shall issue his receipt therefor in duplicate, one of which shall be filed with the state board of tax commissioners, and those taxes which are made payable by executors, administrators or trustees, shall be paid within fifteen months from the death of the testator or intestate, or within fifteen months from assuming the trust by such trustee, unless a longer period is fixed by the court. All taxes not paid within the time prescribed in this section shall draw interest at the legal rate until paid. (L. '07, s. 7, p. 502.)

**S. 13. Procedure in appraisement. — Appeal.** The superior court, having jurisdiction, shall appoint three suitable, disinterested persons to appraise the state and effects of deceased persons for inheritance tax purposes, and unless otherwise provided by order of the court, the appraisers appointed under the probate law to appraise the estate and effects of deceased persons, shall be and constitute the appraisers under the provisions of this act. It shall be the duty of all such appraisers to forthwith give notice to the state board of tax commissioners, of the time and place at which they will appraise such property, which time shall not be less than twenty days from the date of such notice. The notice shall be served in the same manner as is prescribed for the commencement of civil actions, unless a different one is ordered by the court or judge, and the notice, with the proof of the service thereof, shall be returned to the court with the appraisement. The state board of tax commissioners or any person interested in the estate appraised, may file exceptions to the appraisement, which shall be heard and determined by the court having jurisdiction in probate of the estate involved. If, upon the hearing, the court finds the amount at which the property is appraised is its market value and the appraisement was fairly and in good faith made, it shall approve such appraisement; but if it finds that the appraisement was made at a greater or less sum than the market value of the property, or that the same was not fairly or in good faith made, it shall set aside the appraisement and determine such value. The state board of tax commissioners, or any one interested in the property appraised, may appeal to the supreme court from the order of the superior court in the premises. (L. '07, s. 12, p. 504.)

**S. 14. Tax on corporate stock. — How paid.** If a foreign executor, administrator or trustee shall assign any corporate stock, or obligations in this state standing in the name of a decedent, or in trust for a decedent, liable to such tax, the tax shall be paid to the state treasurer on or before the transfer thereof, otherwise, the corporation permitting its stock to be so transferred on its books shall be liable to pay such tax. No safe deposit company, bank or other institution, person or persons, holding any securities, property or assets of any non-resident decedent, shall deliver or transfer the same to any non-resident executor, administrator or representative of such decedent, until after a notice in writing of the time and place of such transfer shall have been duly given the state board of tax commissioners at least ten (10) days prior thereto, and the tax imposed by this act paid thereon, and every such safe deposit company, bank or other institution, person or persons, shall be liable for the payment of such tax. (L. '07, s. 8, p. 503.)

**S. 15. List of heirs.** Upon the filing of any petition for letters of administration or for the probate of any will, it shall be the duty of the petitioner to furnish the clerk of the court with a list of the heirs, legatees or devisees of the estate, and the relationship which each bears to the decedent, together with a statement of the location, nature and probable value of the entire estate, and an estimate of the amount or value of each distributive share. The clerk of the court shall immediately forward a true copy of such list to the state board of tax commissioners, also notifying said board of the date of such filing, together with the name, and, if known, the place of residence of the deceased, the name, and, if known, the place of residence of the petitioner, and, if known, the name and place of residence of the attorney for petitioner, such list and notice to be in such form as the state board of tax commissioners may prescribe. (L. '07, s. 13, p. 505.)

**S. 16. Extension of time if estate complicated.** Whenever, by reason of the complicated nature of an estate, or by reason of the confused condition of the decedent's affairs, it is [impracticable] for the executor, administrator, trustee or beneficiary of said estate to file with the clerk of the court a full, complete and itemized inventory of the personal assets belonging to the estate, within the time required by statute for filing inventories of the estate, the court may, upon the application of such representatives or parties in interest, extend the time for the filing of the appraisal for a period not to exceed three months beyond the time fixed by law. (L. '01, s. 16, p. 74; P. C., s. 8757.)

**S. 17. Compounding tax if value of estate doubtful.** Whenever an estate charged, or sought to be charged with the inheritance tax, is of such a nature, or is so disposed, that the liability of the estate is doubtful, or the value thereof cannot, with reasonable certainty, be ascertained under the provisions of law, the state board of tax commissioners may compromise with the beneficiaries or representatives of such estates, and compound the tax thereon; but said settlement must be approved by the superior court having jurisdiction of the estate, and after such approval, the payment of the amount of the taxes so agreed upon shall discharge the lien against the property of the estate. (L. '07, s. 9, p. 503.)

**S. 18. State board of tax commissioners to supervise collection of tax. — Records.** Administrators, executors and trustees of the estates subject to the inheritance tax shall, when demanded by the state board of tax commissioners, send such board certified copies of such parts of their reports as may be demanded by it or any member thereof, and upon refusal of said parties to comply with such demand, it is the duty of the clerk of the court to furnish such copies, and the expense of making the same shall be charged against the estate as are other costs in probate. And it shall be the duty of the state board of tax commissioners to exercise general supervision of the collection of the inheritance taxes provided in this act, and in the discharge of such duty the state board of tax commissioners, or any member thereof, may institute and prosecute such suits or proceedings in the courts of the state as may be necessary and proper, appearing therein for such purpose; and it shall be the duty of the several county attorneys to render assistance therein when called upon by such board so to do. The said board shall keep a record in which shall be entered a memoranda of all the proceedings had in each case, and shall also keep an itemized account show-

ing the amount of such taxes collected, in detail, charging the state treasurer therewith. (L. '07, s. 10, p. 503.)

**Certain charitable bequests exempted.** All bequests and devises of property within this state when the same is for one of the following charitable purposes, namely: The relief of aged, impotent [indigent] and poor people; maintenance of the sick or maimed or the support or education of orphans or indigent children shall be exempt from the payment of any tax or sum under any inheritance tax law; and any property in this state which has been devised or bequeathed for such charitable purposes, and upon which a state inheritance tax is claimed or is owing, is hereby declared to be exempt from the payment of such tax, and the same is hereby remitted. (L. '05, s. 1, p. 190; P. C., s. 8759k.)

## WEST VIRGINIA.

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### In General.

West Virginia adopted a collateral inheritance tax in 1887 and extended it to direct inheritances in 1907. The exemptions apply to the individual shares, not to the estate as a whole.

As to the position of stocks in a West Virginia corporation owned by a non-resident, the tax commissioner says: —

"The legislature of 1909 attempted to pass a law whereby such inheritance tax could be collected on stock in West Virginia corporations owned by deceased non-residents, but so far no taxes have been collected under this statute. The collection of the same has been resisted with a claim that the statute does not fix a tax on such stock."

The statute contains a retaliative provision designed to reduce double taxation of non-resident securities similar to that in Connecticut, though not limited to registered bonds. It provides that the state shall tax stock and bonds of a West Virginia corporation kept outside the state if owned by residents of states which so tax stocks and bonds of their own corporations if owned by West Virginia residents.

The following property of all non-residents is specifically made taxable: all real estate and tangible property including money on deposit within the state; all intangible personal property including bonds, securities, shares of stock and choses in action, the evidence of ownership of which is actually within the state.

Double taxation of personal property belonging to a resident of the state but kept outside the state is avoided by a provision similar to that in Massachusetts, that if such property has been taxed in other states West Virginia will not tax it unless the outside tax is less than the West Virginia tax, and then West Virginia collects only the difference.

A corporation is responsible for the tax if it transfers securities before the tax is paid, if it had reasonable cause to know that the property was subject to the tax. It is not the practice to require an inventory of the estate of a non-resident.

## Constitutional Limitations.

### West Virginia Constitution 1872, a. 10, s. 1.

Taxation shall be equal and uniform throughout the state, and all property, both real and personal, shall be taxed in proportion to its value, to be ascertained as directed by law. No one species of property, from which a tax may be collected, shall be taxed higher than any other species of property of equal value; but property used for educational, literary, scientific, religious or charitable purposes; all cemeteries and public property may, by law, be exempted from taxation. The legislature shall have power to tax, by uniform and equal laws, all privileges and franchises of persons and corporations.

## List of Statutes.

- 1887. Statutes of West Virginia, c. 31.
- 1891. " " " " c. 116.
- 1904. " " " " c. 6, pp. 108-117.
- 1907. " " " " c. 55.
- 1909. " " " " c. 63.
- 1887. Warth's Code of West Virginia, pp. 244-247, s. 51a, cls. 1-19.
- 1891. Ditto (3d edition), pp. 244-246, s. 51a, cls. 1-19.
- 1899. Ditto (4th edition), c. 32, pp. 266-268, s. 51a, cls. 1-19.
- 1906. Code of West Virginia, c. 33, ss. 1064-1089.
- 1907. West Virginia Code Annotated (Supplement), c. 33, ss. 1064-1065.
- 1909. Ditto, c. 33, ss. 1064, 1065, 1065a, 1065b and 1069.

## Statutes.

**W. Va. St. 1887, c. 31.** Passed February 24, 1887; in effect ninety days thereafter.

S. 1. All estates, real, personal and mixed, money, public and private securities for money of every kind, passing from any person who may die seized or possessed thereof, being in this state, or any part of such estate or estates, money or securities, or interest therein transferred by the intestate laws of this state, by will, deed, grant, bargain, gift or sale, made or intended to take effect in possession after the death of the grantor, bargainor, deviser or donor, to any person or persons, bodies politic or corporate, in trust or otherwise, other than to or for the use of the father, mother, wife, children and lineal descendants of the grantor, bargainor, deviser, donor or intestate, shall be subject to a tax of two and a half per centum on every hundred dollars of the clear value of such estates, money or securities; and all personal representatives shall only be discharged from liability for the amount of such tax, the payment of which they may be charged with, by paying the same for the use of this state, as hereinafter directed; Provided, That no estate which may be valued at a less sum than one thousand dollars, shall be subject to the tax imposed by this section.

Ss. 2-19 cover the assessment and collection of the tax.

W. Va. St. 1891, c. 116, amends W. Va. St. 1887 by including the husband in the exempt classes.



West Va. St. 1904, c. 6, re-enacts the W. Va. Code, c. 33. The statute provides a tax of three per cent on transfers to brothers or sisters, five per cent to the grandfather or grandmother, and seven and one half per cent to any other person excepting father, mother, husband, wife and child or lineal descendants, or bequests for public purposes or for educational, literary, scientific, religious or charitable purposes.

W. Va. St. 1907, c. 55, in effect May 23, 1907, amends W. Va. Code, c. 33, ss. 1 and 2.

W. Va. St. 1907, c. 55, approved February 27, 1907, in effect ninety days from passage, amends and re-enacts W. Va. Code, c. 33, ss. 1 and 2, by providing a tax except for educational, literary, scientific, religious, charitable, or public purposes on the transfer by will or inheritance or by transfer in contemplation of death or intended to take effect in possession at or after death, or certain transfers by joint tenancy or by power of appointment.

S. 2 provides that the amount of the tax shall be one per cent on lineals, three per cent on a brother or sister, five per cent to a grandfather or grandmother, and seven and one half per cent to any other person or corporation, with an exemption to any father, mother, husband, wife, child or lineal descendants when the gift is less than twenty thousand dollars.

W. Va. St. 1909, in effect May 23, 1909, c. 63, amends W. Va. Code, c. 33, ss. 1, 2, and 6.

## THE PRESENT ACT.

AN ACT ENACTING CHAPTER THIRTY-THREE OF THE CODE OF WEST VIRGINIA RELATING TO TAXES ON COLLATERAL INHERITANCES, devises, distributive shares and legacies, as amended and re-enacted by the legislature of 1907 and the legislature of 1909.

[Original act passed August 8, 1904; in effect 90 days from its passage. Amended by Senate Bill No. 178, Acts of the Legislature of 1907, passed Feb. 22, 1907, and in effect 90 days from passage. Further amended by Chapter 63, Acts of the Legislature of 1909, passed Feb. 26, and in effect 90 days from its passage.]

**S. 1. Transfers taxable.** A tax, payable into the treasury of the state, shall be imposed upon the transfer, in trust or otherwise, of any property, or interest therein, real, personal or mixed, if such transfer be

(a) by will or by the laws of this state regulating descents and distributions from any person who is a resident of the state at the time of his death and who shall die seized or possessed of the property;

(b) by will or by laws regulating descents and distributions, of property within the state, or within its jurisdiction, and the decedent was a non-resident of the state at the time of his death;

(c) by a resident, or be [*sic*] of property within the state, or within its jurisdiction, by a non-resident, by deed, grant, bargain, sale or gift made in contemplation of the death of the grantor, vendor, bargainer or donor, or intended to take effect in possession or enjoyment at or after such death.

(d) If any person shall transfer any property which he owns or shall cause any property, to which he is absolutely entitled, to be transferred to, or vested

in, himself and any other person jointly, so that the title therein, or in some part thereof, vest no survivorship in such other person, a transfer shall be deemed to occur and to be taxable under the provisions of this act upon the vesting of such title.

(e) Whenever a person shall exercise by will a power of appointment derived from any disposition of property, such appointment, when made, shall be deemed a transfer taxable under the provisions hereof.

**S. 2. Rates.** When the property or any beneficial interest therein passes by any such transfer where the amount of the property shall exceed in value the exemption hereinafter specified, and shall not exceed in value twenty-five thousand dollars, the tax hereby imposed shall be: —

(a) Where the person or persons entitled to any beneficial interest in such property shall be the wife, husband, child, lineal descendant or lineal ancestor of the decedent, at the rate of one per centum of the market value of such interest in such property.

(b) Where the person or persons entitled to any beneficial interest in such property shall be the brother or sister of the decedent (and the term brother or sister shall not include a brother or sister of the half blood), at the rate of three per centum of the market value of such interest in such property.

(c) Where the person or persons entitled to any beneficial interest in such property shall be further removed in relationship from the decedent than wife, husband, child, lineal descendant, lineal ancestor, brother or sister, at the rate of five per centum of the market value of such interest in such property.

**S. 2a. Progressive rates.** The foregoing rates in section two are for convenience termed the primary rates. When the amount of the market value of such property or interest exceeds twenty-five thousand dollars, the rate of tax upon such excess shall be as follows: —

(a) Upon all in excess of twenty-five thousand dollars up to fifty thousand dollars one and one-half times the primary rates.

(b) Upon all in excess of fifty thousand dollars and up to one hundred thousand dollars, two times the primary rates.

(c) Upon all in excess of one hundred thousand dollars and up to five hundred thousand dollars, two and one-half times the primary rates.

(d) Upon all in excess of five hundred thousand dollars, three times the primary rates.

**S. 2b. Exemptions.** The following exemptions from the tax are hereby allowed: —

(a) All property transferred to a person or corporation in trust or use solely for educational, literary, scientific, religious or charitable purposes, or to the state or any county or municipal corporation thereof for public purposes, provided the property so transferred is used for the purposes herein mentioned in this state, shall be exempt.

(b) Property of the market value of fifteen thousand dollars transferred to the widow of the decedent, and ten thousand dollars transferred to each of the other persons described in sub-division (a) of section two shall be exempt.

**S. 3. Market value.** The market value of property is its actual market value after deducting debts and incumbrances for which the same is liable, and

to the payment of which it shall actually be subjected. In fixing such market value, allowances shall not be made for debts incurred by the decedent, or incumbrances made by him, unless such debts or incumbrances were incurred or created in good faith for an adequate consideration, nor for any debt in respect whereof there is a right to reimbursement from any other estate or person, unless such reimbursement from any other estate or person cannot be obtained.

**S. 4. Bequest in payment of debt or to executor.** Every devise or bequest ostensibly in payment of a debt of the testator shall be taxable upon the excess in value of the property devised or bequeathed, otherwise liable to such tax, over and above the true amount of such debt. Every devise or bequest to an executor or trustee, purporting to be in compensation for services shall be taxable upon so much of the value of the property devised or bequeathed, otherwise liable to such tax, as is in excess of a reasonable compensation for such services.

**S. 5. Particular estates and remainders.** Whenever the transfer of any property shall be subject to tax hereunder and only a life estate, or an interest for a term of years, or a contingent interest to be transferred to one person and the remainder or reversionary interest to another, the state tax commissioner on the application of any person in interest, or upon his own motion, may after due notice to the persons interested, apportion such taxes among such persons and assess to each of them his proper share of such taxes, and shall make his certificates accordingly, which shall be forwarded and disposed of in the same manner as other certificates by him herein provided for. The portion of any such taxes apportioned to any person entitled in remainder or reversion shall be payable at once, and such person shall be required to pay them in the same manner, and within the same time, as if his interest had vested in possession.

[That portion of this law imposing an inheritance tax of one per cent on the value of property in excess of \$20,000 passing to the father, mother, husband, wife, or lineal descendant of the person making the transfer, is in effect from May 22, 1907, until May 27, 1909. By act of the legislature of 1909, taking effect May 27, 1909, property of the value of \$15,000 passing to the widow of decedent, and \$10,000 passing to husband, child, lineal descendant or lineal ancestor of decedent is exempt from the inheritance tax of one per cent.]

**S. 6. Property taxable in another state.** A transfer of personal property of a resident of the state which is not therein or within the jurisdiction thereof, at the time of his death, shall not be taxable, under the provisions of this act if such transfer or the property be legally subject in another state or country to a tax of a like character and amount to that hereby imposed, and if such tax be actually paid or guaranteed or secured, in accordance with law in such other state or country, if legally subject in another state or country to a tax of like character, but of less amount than that hereby imposed, and such a tax be actually paid, or guaranteed or secured, as aforesaid, the transfer of such property shall be taxable under this act to the extent of the difference between the tax thus actually paid, guaranteed or secured, and the amount for which such transfer would otherwise be liable hereunder, or within the jurisdiction thereof. The provision of this act shall apply to the following property belonging to deceased persons,

non-residents of this state, which shall pass by will or inheritance under the law of any other state or country, and such property shall be subject to the tax prescribed in this section. All real estate and tangible personal property, including money on deposit within this state; all intangible personal property, including bonds, securities, shares of stock and choses in action the evidence of ownership to which shall be actually within this state; shares of the capital stock or bonds of all corporations organized and existing under the laws of this state, the certificate of which stocks or bonds shall be within this state, where the laws of the state or country where such decedent resided, shall, at the time of his death impose a succession, inheritance, transfer, or similar tax upon the shares of the capital stock or bond of all corporations organized or existing under the laws of such state or country, held under such conditions at their decease by residents of this state.

**S. 7. Lien. — Liabilities.** All such taxes upon any transfer, and the interest that may accrue on such transfer shall, until paid, be and remain a charge and lien upon the property transferred, superior to any lien created after such transfer, and no title shall vest or be transferred as to any such property, except subject to the lien for such taxes, and no such property shall be paid, transferred or delivered, in whole or in part, until the payment into the treasury of the state of the amount of such tax as by the certificate of the state tax commissioner may be shown to have been assessed, as hereinafter provided. The person to whom the property is transferred, if he shall receive the same before the tax thereon is paid, and the executors, administrators and trustees having charge of every estate so transferred, shall be personally liable for such tax and interest until its payment, and no statute of limitations shall be a defence to an action for the recovery thereof.

**S. 8. Suspending payment.** Whenever it shall be necessary in the settlement of any estate to retain property or funds for the purpose of paying any liability, the amount or validity of which is not determined, the payment of the whole or a proportionate part of the tax may be suspended to await the disposition of such claim.

**S. 9. When due. — Interest.** In the case of such a suspension the tax shall be payable when the time of the suspension expires. In all other cases the tax shall be payable as soon as the amount thereof is assessed by the state tax commissioner, as herein provided. Interest shall be charged and collected upon all taxes imposed by this act from the time when the same become payable, at the rate of four *per cent* per annum.

**S. 10. Property liable. — Power of sale.** Every executor, administrator, trustee, guardian, committee or other fiduciary having charge of an estate, any part of which is subject to such tax, and every person to whom property is transferred which is subject to such tax, but is not in charge of any such fiduciary, shall pay the same upon the market value of all the property subject to tax, whether there are or are not devises or bequests of successive interests in the same property, and whether such successive interests, if any, are defeasible or indefeasible, absolute or contingent. Such payment shall be made out of said estate in the same manner as other debts may be paid. Any such fiduciary

may sell personal property for that purpose when necessary, and the circuit court may authorize him to sell real estate for the payment thereof in the same manner as it may authorize the sale of real estate for the payment of debts.

**S. 11. Payment on transfer. — Liabilities.** Whenever any foreign executor, administrator or trustee shall assign or transfer in this state any stock, bond or other security liable to any such tax, standing in the name of, or in trust for a decedent, he shall have the tax assessed on such transfer by the state tax commissioner, and shall pay the tax into the state treasury on the transfer thereof; otherwise any person having authority to make or permit such transfer, who shall make or permit it, shall be liable to pay the tax if he then had knowledge, or reasonable cause to believe, that the property was liable to tax.

**S. 12. Reports.** Whenever the county court of any county, or the clerk thereof, shall have reason to believe that a transfer subject to taxation hereunder has been made, whether such belief be based on any application for the probate of a will, the appointment of any fiduciary or the admission to record of a deed or other writing intended to take effect in possession or enjoyment, at or after the death of the maker thereof, or appearing to be in contemplation of his death, or be based on any information otherwise derived, such clerk shall report the same to the state tax commissioner. Such a report shall be made quarterly as soon as possible after the first day of January, April, July and October in each year, and shall relate to all such matters as were not covered by any previous reports. A special report may be made by the clerk at any time. If there be no reason to believe that any such transfer has been made since the date of the last preceding report, that fact shall be stated in such quarterly report, but if there be reason to believe that such a transfer has been made, such quarterly or special report shall show the nature thereof, the name of the decedent, deviser, grantor, vendor, bargainer, or donor; the name or other description, and the address of the person or corporation to or for whose use or benefit any property may be transferred, and the relationship, if any, between such person and the person from whom the property is transferred, as far as the court or clerk may have any information respecting such matters; the nature of the property transferred, with such general description and approximate valuation as the court or clerk may be able to give. Any other person, whether interested in such property or not, may make a like report to the state tax commissioner. Every such report, whether by the clerk or by any other person, shall be filed by the commissioner, and retained in his office until the tax be paid on the transfers therein mentioned, or it shall be ascertained that they are not subject to tax, and shall then be destroyed; and at all times such report shall be confidential and privileged, and its contents shall not be inspected or made known by any one, except by the state tax commissioner as to any report made by a clerk, when there shall be a question whether such clerk has complied with the provisions of this chapter.

**S. 13. Statement by executors.** With the inventory of every estate the executor, administrator or trustee shall file a statement showing, to the best of his judgment, whether any transfer of any property mentioned in such inventory is taxable hereunder, and if any be so taxable, setting forth the same matters mentioned in the preceding section, with as much accuracy as possible; and if the estate be one, no inventory of which is required to be filed, such statement

shall nevertheless be filed in the same office, and within the same time, in which an inventory is in other cases required to be filed.

**S. 14. Assessment.** The state tax commissioner shall as soon as may be, from the statements and reports made by the clerk and the personal representative or trustee or other person as aforesaid, from the inventory of the estate, if there be one, and from such other information as he may be able to procure, ascertain whether any transfer of any property be subject to a tax under the provisions of this chapter, and if it be subject to tax, shall ascertain and assess the amount of the tax to which it is subject. If in his opinion no transfer of any part of such property is taxable hereunder, he shall certify that fact in writing made in duplicate. One of said certificates shall be forwarded by him to the clerk of the county court, who is required to make report under section twelve hereof, and the other certificate shall be forwarded to the administrator, executor or trustee having such property in charge, or to the grantee, vendee, bargainee or donee thereof. If in his opinion the transfer of any of the property so transferred is taxable under the provisions of this act, he shall in like manner certify a description of the property, or of the part thereof so liable, and of the amount of tax with which it is assessed, and shall make duplicate certificates showing those facts, one of which he shall forward to the said clerk and one to said administrator, trustee, grantee, vendee, bargainee or donee.

**S. 15.** If any transfer be not reported to the state tax commissioner by the clerk of the county court or the executor, administrator, trustee, grantee, vendee, bargainee or donee, or other person, the said tax commissioner may proceed, upon such information as he can obtain, to inquire and determine whether any such transfer is subject to tax under this act, and what tax, if any, should be assessed, and shall proceed as to any such transfer and the property passing thereby, in all respects, as if the same had been reported to him as required by this chapter.

**S. 16. Certificate to be recorded.** The executor, administrator, trustee, devisee, vendee, grantee, bargainee or donee shall cause the certificate, so received from the state tax commissioner, to be recorded by the clerk of the county court. Such certificate shall be recorded in the book wherein inventories and accounts of fiduciaries are recorded; but it shall be in compliance with this section if such a certificate be laid before a commissioner of accounts of said court at the first settlement thereafter of the account of any fiduciary, and be made a part of the report of such commissioner of accounts and be recorded with it.

**S. 17. Additional assessment.** Notwithstanding any such certificates may have been made and recorded, if it afterward appear to the state tax commissioner that the transfer of the property mentioned in such certificate, or any part thereof, is subject to any tax and in addition to that mentioned in such certificate, or that it is taxable in a case where such certificate showed that it was not liable to such tax, he shall assess the proper tax thereon in addition to any tax which may have been theretofore assessed, and shall forthwith certify the amount of the same in duplicate, and forward one of such certificates to each of the persons to whom his original certificate was required to be forwarded. The certificate, so forwarded to the clerk of the county, shall by him be

forthwith recorded in the book in which deeds of trust and mortgages are recorded, and from the time of its admission to record shall constitute a lien on the property on which tax is assessed, for the amount of such taxes, and any interest accruing thereon, until the same are paid, except as against purchasers for value before such admission to record, without notice of such additional liability and as against those who may claim under such purchaser, having purchased for valuable consideration without notice of such liability.

**S. 18. Payment.** As soon as the amount of any tax upon any transfer shall be certified by the state tax commissioner, the person liable for such tax shall pay the amount thereof to the credit of the treasury of West Virginia, in the manner provided for the payment of other moneys into such treasury, except that the certificate of the bank in which the same may be deposited shall be in duplicate, and shall describe the property upon the transfer of which the tax is assessed and that one of such duplicate certificates of deposit shall be forwarded to the state tax commissioner. The said state tax commissioner shall at once certify, in duplicate, that all the taxes upon such transfer under the provisions of this act have been paid, and shall forward such certificates, one to the person making the payment and the other to the clerk of the county court, who shall record the same in the book in which releases are recorded. From the date when any such certificate of payment, or any such certificate that the property is not liable to such taxes, is admitted to record, the property mentioned in such certificate shall be free from any lien or claim for any such taxes, except as provided in the preceding section.

**S. 19. Proceedings to collect.** If any such taxes, hereinbefore provided for, shall not be paid within sixty days from the time they become payable, or if there be an appeal with respect to the same or payment thereof be prevented by litigation or other unavoidable cause, within sixty days after the decision of such appeal or the end of such litigation or other cause of delay, the state tax commissioner shall on behalf of the state, and with the assistance of the prosecuting attorney of the county, proceed in the circuit court, by appropriate proceedings to enforce the lien of such taxes upon any property subject to such lien, and to obtain the sale thereof, or of so much thereof as may be necessary to satisfy such lien, and relief shall be given by such circuit court accordingly. In addition to any other remedy for the collection of any tax upon such transfer, the same may be recovered in an action of assumpsit on behalf of the state of West Virginia against any person liable for such tax, and the state tax commissioner is authorized to bring such action in any circuit court or before any justice having jurisdiction, and the prosecuting attorney shall assist in the prosecution thereof. The state tax commissioner may compromise and settle the amount of any such tax when there is a controversy as to the relationship between the former owner of the property and the person to whom it is transferred.

**S. 20. Appeal.** Within thirty days after the state tax commissioner shall have forwarded a certificate of the amount of tax assessed upon the transfer of any property, any person interested in such transfer or in such property, may apply to the circuit court of any county, in which such property or the greater part thereof may be, for an appeal from the assessment so made. Such application shall be by petition in writing, stating the names and addresses of all

persons interested, showing the grounds upon which the appellant claims to be aggrieved, and an appeal shall be allowed thereon forthwith, and, until the same shall have been heard and decided, proceedings for the collection of such taxes may be stayed by order of said court for good cause shown, and upon such conditions as it may direct. Such appeal shall have precedence over other civil cases, except those relating to taxes claimed by the state, and shall be heard and decided as soon as may be. Before any such hearing reasonable notice thereof shall be given to all other persons interested, and the state tax commissioner and prosecuting attorney, who, with the said commissioner, shall defend the interests of the state. Upon such hearing the court shall consider all certificates relating to such taxes, and all other pertinent evidence that may be offered by either party. If it be of the opinion that the assessment appealed from was correct, it shall affirm the same; if it be of the opinion that the transfer was not subject to any such taxes, it shall set aside the said assessment and enter an order exonerating the property from taxes. If it be of the opinion that the transfer was subject to such taxation, but that the amount of taxes assessed was erroneous, it shall correct the assessment thereof by increasing, or decreasing the amount thereof, as it may think just, and shall enter judgment accordingly. A copy of the judgment upon any such appeal shall be certified in duplicate, and forwarded and recorded as is herein provided with respect to the certificate of the state tax commissioner.

**S. 21. Fees.** For his services in recording such certificate or copy of judgment, the clerk of the county court shall be entitled to a fee of fifty cents, to be taxed to and paid by the person to whom such property shall be transferred.

**S. 22. Accounts of fiduciary.** In the settlement of his accounts any fiduciary making payment of the amount assessed upon any such transfer, as shown by any such certificate or judgment, may have credit for such payment upon filing the certificate of the state tax commissioner that such taxes have been paid, but no final settlement shall be made of the account of any fiduciary liable for such taxes until he shall have filed such certificate of payment.

**S. 23. Compromise.** The state tax commissioner may compromise and settle the amount of such taxes whenever controversy may arise as to the ownership between the former owner of the property and the person to whom the same may have passed.

**S. 24. Liabilities on bonds of fiduciaries.** Every fiduciary, and the sureties on his bond, shall be liable upon such bond for all moneys such fiduciary may receive for taxes under this chapter, and for the proceeds of all sales of real estate received by him under the provisions hereof; and if any such fiduciary fail to perform any of the duties imposed on him by this chapter, he and his sureties shall be liable upon his bond for any damages resulting from such failure, the court under whose order he qualified may revoke his authority, and he and his sureties shall be liable to the same proceedings as if his authority has been revoked for any other cause.

**S. 25. Misdemeanors.** Any clerk or other person failing to discharge any duty imposed upon him by this act shall be guilty of a misdemeanor, and be



fined in the discretion of the court, not less than ten nor more than five hundred dollars.

**S. 26. Furnishing information to tax commissioner.** Every person having in his possession or control any book or paper containing any information respecting property transferred as aforesaid, shall at the request of the state tax commissioner exhibit the same to him or to the prosecuting attorney of the county, and any person in interest shall make written answer under oath to any questions which the said state tax commissioner may put in writing concerning such property. Any person failing to comply with the provisions of this section shall be guilty of a misdemeanor, and upon conviction thereof shall be, in the discretion of the court, fined not less than ten nor more than five hundred dollars. All acts and parts of acts inconsistent herewith are hereby repealed.

## WISCONSIN.

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### In General.

Wisconsin's first inheritance tax law, passed in 1868, amounted to little more than a sliding scale of probate fees, and after various amendments was declared unconstitutional. A genuine inheritance tax, enacted in 1899, was declared unconstitutional because the exemption applied to the estate as a whole, not to the individual shares. Finally in 1903 the legislature passed an act which satisfied the constitutional requirements. This is the present act with important amendments in 1911. The acts of 1911 confined exemptions to the first twenty-five thousand dollars and extended the liability for transfer of stock of a non-resident to any foreign or domestic corporation doing business in the state. The amendments strengthened other administrative provisions of the statute and also gave the attorney general power to compromise certain tax claims. Consent to transfers must now be obtained from the court instead of from the attorney general or public administrator.

The exemption applies to each individual share, not to the estate as a whole. If the Wisconsin portion of an inheritance is less than the exempted amount, Wisconsin imposes no tax.

Wisconsin taxes stock in a Wisconsin corporation owned by a non-resident in a foreign corporation owning property in Wisconsin also taxable. On this point the attorney general says: "This question has never been before our supreme court, and this department has not had occasion as yet to deal with a case squarely in point."

A corporation or individual that transfers or delivers any securities or assets of a non-resident without first notifying the attorney general, and then receiving his permission to do so, is responsible for the tax. It is not the practice to require a complete inventory of a non-resident's estate. The tax is producing not far from \$200,000 annually.

### List of Statutes.

1868. Statutes of Wisconsin, c. 121, s. 4.  
 1871. Revised Statutes, c. 117, pars. 59-62, 69.  
 1872. General Laws, c. 40.  
 1877. Statutes of Wisconsin, c. 98.  
 1878. Revised Statutes, par. 2483.  
 1880. Statutes of Wisconsin, c. 262.  
 1889. " " " c. 176.  
 1899. " " " c. 355.  
 1901. " " " c. 245,  
 1903. " " " c. 44.  
 1903. " " " c. 249.  
 1903. " " " c. 297.  
 1905. " " " c. 96.  
 1907. " " " c. 500.  
 1907. " " " c. 660, St. 3813A.  
 1909. " " " c. 38.  
 1909. " " " c. 504.  
 1899-1906. Wisconsin Statutes (Supplement), Secs. 1087-1 to 1087-24.  
 1911. Statutes of Wisconsin, c. 450.  
 1911. " " " c. 530.  
 1899-1906. Wisconsin Statutes, secs. 1087-1 to 1087-24.

### Constitutional Limitations.

**Wisconsin Constitution, 1848, a. 8, s. 1.**

The rule of taxation shall be uniform, and taxes shall be levied upon such property as the legislature shall prescribe.

It was claimed that the Wisconsin constitution limits the power of taxation to property only and that the inheritance tax is an excise levied upon a right or privilege and hence unconstitutional within this section. The court quotes at length from debates in the constitutional convention and upon the practical construction of the provision by the legislature since the passage of the constitution and finds that this section 1, article 8, is a section governing the taxation of property alone and not intended to prohibit the taxation of privileges or occupations. *Nunnenmacher v. State*, 129 Wis. 190, 204-220, 108 N. W. 627, 9 L. R. A. N. S. 121.

The clause, "the rule of taxation shall be uniform," if applicable to excise taxation at all, means no more than the general equality clauses of the constitution, and hence, uniformity of taxation or even equality of taxation as applied to excise taxes must necessarily mean taxation which does not discriminate, but which operate

alike on all persons similarly situated. In other words, proper classification may be made and a different rate applied to each class. *Nunnemacher v. State*, 129 Wis. 190, 221, 108 N. W. 627, 9 L. R. A. N. S. 121.

**Wis. Const. 1848, a. 8, s. 5.**

The legislature shall provide for an annual tax sufficient to defray the estimated expenses of the state for each year; and whenever the expenses of any year shall exceed the income, the legislature shall provide for levying a tax for the ensuing year sufficient, with other sources of income, to pay the deficiency, as well as the estimated expenses of such ensuing year.

The Wisconsin statute of 1903 does not violate this section. This section expressly recognizes the fact that the state may have other sources of income aside from the direct tax upon property and that the section is simply intended as a regulation covering the levying of a direct tax upon property if such a tax be necessary. *Nunnemacher v. State*, 129 Wis. 190, 223, 108 N. W. 627, 9 L. R. A. N. S. 121.

### **The Amendment of 1908.**

It is noted by Timlin, J., dissenting, that the constitution of Wisconsin was amended in 1908, by adding to Article 8, s. 1, "taxes may also be imposed on incomes, privileges and occupations, which taxes may be graduated and progressive, and reasonable exemptions may be provided." *Beals v. State*, 139 Wis. 544, 557, 121 N. W. 347.

**Wis. Const. 1848, a. 1, s. 9.**

Every person is entitled to a certain remedy in the laws, for all injuries or wrongs which he may receive in his person, property, or character; he ought to obtain justice freely, and without being obliged to purchase it; completely and without denial, promptly and without delay; conformably to the laws.

### **The Unconstitutional Statute of 1868 and Amendments.**

**Wis. St. 1868, c. 121.** Approved March 5, 1868, in effect December 1, 1868.

S. 3. The provisions of this act shall not apply to counties or county judges wherein the county judge or county court has civil jurisdiction.

S. 4. It shall be the duty of each executor, administrator or guardian, to pay or cause to be paid, to the county treasurer for the use and benefit of the county in which the estate of the deceased, or minor, is situate, the following sum according to the value of the estate and property as shown by the inventory and appraisal, that is to say: twenty dollars when the value of the estate shall exceed one thousand dollars, and shall not exceed the value of two thousand dollars;

thirty dollars when the estate shall exceed the value of two thousand dollars, and shall not exceed the value of five thousand dollars; forty dollars when the value of the estate shall exceed five thousand dollars, and shall not exceed the value of eight thousand dollars; fifty dollars when the value of the estate shall exceed eight thousand dollars, and shall not exceed the value of ten thousand dollars; and seventy-five dollars in all cases when the value of the property shall exceed ten thousand dollars; said sum of money to be paid to the county treasurer of the proper county upon the return and approval of the inventory and appraisal to the county court; and the county court is hereby prohibited from allowing the account of any such executor, administrator or guardian until satisfactory proof shall be produced to said county court of the payment of the sum of money required by the provisions of this section.

Wis. St. 1872, c. 40, approved March 7, 1872, repealed Wis. St. 1868, c. 121, s. 4.

Wis. St. 1877, c. 98, approved February 28, 1877, entitled: "An act regulating the salary of the county judge of Milwaukee County," provided in section 4 that the provisions of Wis. St. 1868, c. 121, s. 4, shall apply to Milwaukee county. The act took effect January 1, 1878.

Wis. St. 1880, c. 262, provides for the payment of fees on the settlement of estates in the county of Milwaukee, amending the revised statutes of 1878, s. 2483.

Wis. St. 1889, c. 176, approved March 25, 1889, entitled: "An act to provide for the payment of certain amounts into the county treasury by executors, administrators and guardians, in lieu of fees in all counties whose population exceeds one hundred and fifty thousand."

S. 1. Every executor, administrator or guardian appointed by the county court of any county whose population exceeds one hundred and fifty thousand shall, in all cases of the administration of estates, and of guardianship hereafter commenced in said court, and in all cases now pending in said court in which the inventory has not been returned and approved according to law, pay to the county treasurer of such county for the use thereof, a sum equal to one-half of one per cent of the appraised value of such estate or property of a ward, as shown by the inventory and appraisal, or established in accordance with chapter 262, of the laws of 1880; provided, however, that when the value of any estate or property of ward shall exceed five hundred thousand dollars the executor, administrator or guardian, shall pay to the county treasurer as aforesaid one-half of one per cent of the five hundred thousand dollars, and one-tenth of one per cent of the value of said estate or property over and above said sum of five hundred thousand dollars. "Provided, further, that estates of three thousand dollars or less, shall be exempt from the payment of probate fees." Such sums shall be paid at the time of the return and approval of the inventory, or whenever the county judge shall have ascertained the amount of the estate, as provided in chapter 262, of the laws of 1880. And no account of any executor, administrator or guardian, shall be allowed without proof of the payment thereof and the same shall constitute a part of the expense of administration and guardianship. In fixing the value of any estate or property of ward for the purpose of this section, the amount of existing specific liens shall be deducted from the gross valuation of such estate or property.

## THE VOID ACT OF 1889.

Wis. St. 1889, c. 176. Approved March 25, 1889, published March 28, 1889.

AN ACT TO PROVIDE FOR THE PAYMENT of certain amounts into the county treasury by executors, administrators and guardians, in lieu of fees in all counties whose population exceed one hundred and fifty thousand.

S. 1. Every executor, administrator or guardian appointed by the county court of any county whose population exceeds one hundred and fifty thousand shall, in all cases of the administration of estates and of guardianship hereafter commenced in said court, and in all cases now pending in said court in which the inventory has not been returned and approved according to law, pay to the county treasurer of such county for the use thereof, a sum equal to one-half of one per cent of the appraised value of such estate or property of a ward, as shown by the inventory and appraisal, or established in accordance with chapter 262, of the laws of 1880; provided, however, that when the value of any estate or property of ward shall exceed five hundred thousand dollars the executor, administrator or guardian shall pay to the county treasurer as aforesaid one-half of one per cent of the five hundred thousand dollars, and one-tenth of one per cent of the value of said estate or property over and above said sum of five hundred thousand dollars. "Provided, further, that estates of three thousand dollars or less, shall be exempt from the payment of probate fees." Such sums shall be paid at the time of the return and approval of the inventory, or whenever the county judge shall have ascertained the amount of the estate, as provided in chapter 262 of the laws of 1880. And no account of any executor, administrator or guardian, shall be allowed without proof of the payment thereof, and the same shall constitute a part of the expense of administration and guardianship. In fixing the value of any estate or property of ward for the purposes of this section, the amount of existing specific liens shall be deducted from the gross valuation of such estate or property.

### A Tax.

This statute provides for the payment by estates in counties having a population of over one hundred and fifty thousand of certain fees. The law could apply to only one county in the state. It was claimed that it was "in lieu of fees" of the judge or register for administration of the estate, as might be inferred from the title of the act. The exaction, however, is not in lieu of fees, as the amount collected is in no way dependent upon the amount and value of such service, but depends entirely upon the valuation or appraisal of the estate, and, if regarded as a probate fee, may be so large as to shock the good sense of everybody. This is not a probate fee, but a charge imposed by the legislature as a condition precedent of allowing the county court to proceed with the administration of the estate. Such charge is necessarily a burden so imposed upon such administrators or such estates or

both to raise money for public purposes. This brings it within the well-recognized definitions of a tax. *State v. Mann*, 76 Wis. 469, 474, 45 N. W. 526, 46 N. W. 51.

### **Not Sustained as Tax for a Salary of Judges.**

The Wisconsin constitution provides that "the legislature shall impose a tax on all civil suits commenced or prosecuted in the municipal, inferior or circuits courts, which shall constitute a fund to be applied toward the payment of the salary of the judges."

Wis. St. 1889, c. 176, cannot be sustained under this section, as the fund thereby raised is not restricted to the payment of the salary of judges. *State v. Mann*, 76 Wis. 469, 477, 45 N. W. 526, 46 N. W. 51.

### **Tax on Whole Estate and not on Succession.**

This act is not a tax upon a succession, but upon the whole estate at its appraised valuation regardless of whether it is solvent or insolvent. In the case of an insolvent estate nothing would be left after the payment of debts for transmission and in most estates there are likely to be sufficient debts to reduce the amount of such transmission far below the amount of such valuation. Besides, the amount of such tax is graduated by the amount of such appraisal and is to be paid by the executors at the time of filing the appraisal notwithstanding they may only be interested as such officials and never succeed to any of such estate. Manifestly the burden imposed is not a succession tax, but a tax upon the whole estate regardless of whether it is solvent or insolvent. *State v. Mann*, 76 Wis. 469, 478, 45 N. W. 526, 46 N. W. 51.

### **Void as Limited to Certain Estates in one County.**

The act is unconstitutional as it provides for the imposition of a tax on certain estates only in counties having more than a certain population and the tax in question really applies only to one county and is further limited to a certain class of estates in that county. *State v. Mann*, 76 Wis. 469, 45 N. W. 526, 46 N. W. 51.

### **Double Taxation if a Property Tax.**

This act cannot be sustained as a tax upon the estate as this would be double taxation where an estate is already assessed for the same year as of the first day of May. *State v. Mann*, 76 Wis. 469, 478, 45 N. W. 526, 46 N. W. 51.

**Whether Void as a Probate Fee.**

The court notices *State v. Gorman*, 40 Minn. 232, which decides the statute cited in that case was in violation of a provision of the Minnesota constitution similar to that of Wisconsin which declares that "every person . . . ought to obtain justice freely and without being obliged to purchase it." The Wisconsin statute of 1889 purports to close the door of the county court against administrators and the estate unless they first advance and pay the amount exacted. This looks very much like purchasing the privilege of going into the county court for the settlement of the estate, but the court finds it unnecessary to determine that question. *State v. Mann*, 76 Wis. 469, 480, 45 N. W. 526, 46 N. W. 51.

**THE VOID ACT OF 1899.**

**Wis. St. 1899, c. 355.** Approved May 4, 1899, in force July 1, 1899.

AN ACT FOR A TAX ON GIFTS, INHERITANCES, bequests and legacies in certain cases.

S. 1. A tax shall be and is hereby imposed upon any transfer of any personal property, of the value of ten thousand dollars or over, or of any interest therein, or income therefrom, in trust or otherwise, to any persons or corporations, except any corporation organized for any religious, charitable or educational purpose, which uses the property so transferred to it solely for the purposes of its organization, in the following cases:—

(1) When the transfer is by will or by the intestate laws of this state from any person dying possessed of the property while a resident of the state.

(2) When the transfer is by will or intestate law, of property within the state, and the decedent was a non-resident of the state at the time of his death.

(3) When the transfer is of property made by a resident, or by a non-resident when such non-resident's property is within this state, by bargain, sale or gift made in contemplation of the death of the vendor or donor, or intended to take effect, in possession or enjoyment at or after such death.

(4) Such tax shall be imposed when any such beneficiary entitled in possession or expectancy, to any personal property, or the income thereof by any such transfer, whether made before or after the passage of this act.

(5) The tax so imposed shall be at the rate of five per centum upon the clear market value of such property, except as otherwise prescribed in the next section.

S. 2. When the property, or any beneficial interest therein, passes by any such transfer to or for the use of any father, mother, husband, wife, child, brother, sister, wife or widow of a son, or the husband of a daughter, or any child or children adopted as such in conformity with the laws of this state, of the decedent, grantor, donor or vendor or to any person to whom any such decedent, grantor, donor or vendor, for not less than ten years prior to such transfer, stood in the mutually acknowledged relation of a parent, or to any lineal descendant, of such decedent, grantor, donor or vendor, born in lawful wedlock, such transfer



of property shall not be taxable under this act, unless it is of the value of ten thousand dollars or more, in which case it shall be taxable under this act at the rate of one per centum upon the clear market value of such property.

S. 19. The words "estate" and "property," as used in this act, shall be taken to mean the personal property or interest therein of the testator, intestate, grantor, bargainor or vendor, passing or transferred to those not herein especially exempted from the provisions of this act, and not as the property or interest therein passing or transferred to individual legatees, devisees, heirs, next of kin, grantees, donees or vendees, and shall include all personal property or interest therein, whether situated within or without this state, over which this state has any jurisdiction for the purpose of taxation. The word "transfer," as used in this act, shall be taken to include the passing of property or any interest therein in possession or enjoyment, present or future, by inheritance, descent, bequest, grant, deed, bargain, sale or gift, in the manner herein prescribed. The words "county treasurer" and "district attorney" as used in this act, shall be taken to mean the treasurer and district attorney of the county of the county court having jurisdiction, as provided in section 10 of this act. Provided, that no language in this act shall be construed as imposing any tax upon the transfer of real property. In case of any transfer of any shares of the capital stock of any corporation which owns real estate, the proportionate market value of its real estate taxed as such, shall be deducted from the appraised value of any such shares so transferred and taxed as herein provided.

#### **Modeled after New York Act.**

This act is in all essential respects a literal copy of the New York law of 1892 with the important exceptions that in the New York law all transfers to collateral kindred and strangers of the value of five hundred dollars or over are taxed, while in the Wisconsin law such transfers are not taxed unless they equal or exceed ten thousand dollars; and in New York the tax is imposed upon transfers of both real and personal property, while in Wisconsin it is confined to personal property alone. *Black v. State*, 113 Wis. 205, 211, 89 N. W. 522, 90 Am. St. Rep. 853.

#### **Construction of New York Act Followed.**

The construction placed upon the New York law before it was adopted in Wisconsin must, so far as the provisions are identical or substantially so, be followed in Wisconsin. *Black v. State*, 113 Wis. 205, 211, 89 N. W. 522, 90 Am. St. Rep. 853.

The court remarks that the New York decisions on this inheritance tax have not decided the question whether the New York statute of 1892 in any respect violates the rule of equality or infringes upon the fourteenth amendment of the constitution of the United States. *Black v. State*, 113 Wis. 205, 213, 89 N. W. 522, 90 Am. St. Rep. 853.

**The succession tax is a tax on the privilege of receiving property,** not a tax upon property. *Black v. State*, 113 Wis. 205, 217, 89 N. W. 522, 90 Am. St. Rep. 853.

### **Exemptions Applied to Entire Property.**

Following the construction placed by the New York courts on the New York statute it should be held to apply the limitations of the act to the aggregate value of the entire property or estate transferred and not to the share of each individual beneficiary. *Black v. State*, 113 Wis. 205, 213, 89 N. W. 522, 90 Am. St. Rep. 853.

### **Classification Void.**

There are two questions as to the validity of Wis. St. 1899, c. 355; first, whether the exemption of all estates under ten thousand dollars is reasonable; and second, is the attempted classification a legal and rational one? The court believes that the exemption of ten thousand dollars is unduly large, but feels that this is a legislative question and declines to hold the statute void for that reason. As to the second question of classification, the court admits the validity of a progressive rate, but remarks as follows: "But while classification is proper, there must always be uniformity within the class. If persons under the same circumstances and conditions are treated differently, there is arbitrary discrimination, and not classification.

"It is claimed that such is the effect of the present law, and we can see no escape from the conclusion. People in the same class are subject to different rules, some being exempt and some being taxed. This results from the peculiar provisions of section 19 of the law, which defines 'estate' and 'property' as construed by the New York courts before we borrowed the law. As already pointed out, under this provision the \$10,000 limitation or exemption is based on the size of the whole property devised or granted, and not upon the amount received by each individual legatee or grantee. Thus it results that one collateral relative, receiving a legacy of \$2,000 from one testator whose estate amounts to but \$9,500, pays no tax, while another collateral relative in the same degree, receiving a legacy of \$2,000 from another testator whose estate amounts to \$10,500, is obliged to pay a tax. Here is unlawful discrimination, pure and simple. No rational distinction or difference can be drawn between the two legatees simply because the estates from which their legacies come are of slightly different size. They are

both within the same class, surrounded by the same conditions and receiving the same benefits. One pays a tax, and the other does not. This is not the equal protection of the laws." *Per* Winslow, J., in *Black v. State*, 113 Wis. 205, 218, 89 N. W. 522, 90 Am. St. Rep. 853.

### **Requirement of Uniformity.**

The court does not decide whether an inheritance tax is subject to the constitutional provision that the rule of taxation shall be uniform. "Considering the clause without undue refinement of reasoning, it is difficult to see why it does not apply to an inheritance or succession tax. It is true such a tax is called an excise in the decisions. An excise is a duty levied on articles of sale or manufacture, upon licenses to pursue certain trades or deal on certain commodities, upon official privileges, etc. Cooley, *Taxation* (2d ed.), 4. But when such duty is levied upon a trade, occupation or privilege as a means of producing revenue alone, and not in exercise of the police power, it is, to all intents and purposes, an exercise of the taxing power, and no good reason is perceived why such taxation is not included within the taxation referred to in the constitution in the clause quoted. The argument against this position is that the words immediately following this clause, namely, "and taxes shall be levied upon such *property* as the legislature shall prescribe," indicate that it is a taxation of property alone which the section covers. *Per* Winslow, J., in *Black v. State*, 113 Wis. 205, 218, 89 N. W. 522, 90 Am. St. Rep. 853.

Whether or not the inheritance tax is included within the word "taxation" as used in the Wisconsin constitution, article 8, section 1, the court remarks that there is still the fourteenth amendment to the federal constitution to be considered, there is still the principle that all men are equal before the law; that life, liberty and property are secure to all alike.

The court quotes Wisconsin constitution, a. 1, s. 1:—

"All men are born *equally* free and independent, and have certain inherent rights; among these are life, liberty and the pursuit of happiness; to secure these rights, governments are instituted among men deriving their just powers from the consent of the governed." *Black v. State*, 113 Wis. 205, 218, 89 N. W. 522, 90 Am. St. Rep. 853.

### **Power of Legislature to Abolish Descent.**

The language used in *Eyre v. Jacob*, 14 Gratt. 430, to the effect that the legislature may "absolutely repeal the statute of wills

and that of descents and distributions, and declare that upon the death of a party his property shall be applied to the payment of his debts and the residue appropriated to public uses," is characterized as a pure dictum and the language used solely by way of argument. The idea expressed has been referred to several times by other courts as in *Mager v. Grima*, 8 How. 490; *Magoun v. Illinois Trust & Savings Bank*, 170 U. S. 283; *State v. Hamlin*, 86 Me. 495, 25 L. R. A. 632, 41 Am. St. Rep. 569 n. The court intimates no favorable opinion upon the proposition laid down by the Virginia court. *Black v. State*, 113 Wis. 205, 216, 89 N. W. 522, 90 Am. St. Rep. 853.

### **The Act of 1901.**

Wis. St. 1901, c. 245, approved April 27, 1901, amends Wis. St. 1899, c. 355, ss. 1, 2, 4, 5, 6, 11, 13, 19. The act contained a clause saving all rights accrued or accruing under the previous act.

### **THE STATUTE OF 1903.**

**Wis. St. 1903, c. 44.** Approved March 27, 1903.

**AN ACT FOR A TAX ON GIFTS, INHERITANCES, bequests, legacies, devises and successions in certain cases.**

**S. 1. Tax imposed on property of any kind transferred.** A tax shall be and is hereby imposed upon any transfer of any property, real, personal or mixed, or any interest therein, or income therefrom in trust or otherwise, to any person, association, or corporation, except corporations of this state organized under its laws solely for religious, charitable or educational purposes, which shall use the property so transferred exclusively for the purposes of their organization within the state in the following cases: —

(1) **While a resident of state.** When the transfer is by will or by the intestate laws of this state from any person dying possessed of the property while a resident of the state.

(2) **Property within state.** When a transfer is by will or intestate law of property within the state or within its jurisdiction and the decedent was a non-resident of the state at the time of his death.

(3) **Non-residents' property within state.** When the transfer is of property made by a resident or by a non-resident when such non-resident's property is within this state, or within its jurisdiction, by deed, grant, bargain, sale or gift, made in contemplation of the death of the grantor, vendor or donor, or intended to take effect in possession or enjoyment at or after such death.

(4) **Transfer before or after passage of act.** Such tax shall be imposed when any such person or corporation becomes beneficially entitled, in possession or expectancy to any property or the income thereof, by any such transfer

whether made before or after the passage of this act, provided that property or estates which have vested in such persons or corporations before this act takes effect shall not be subject to the tax.

(5) **Transfer under power of appointment.** Whenever any person or corporation shall exercise a power of appointment derived from any disposition of property made either before or after the passage of this act, such appointment when made shall be deemed a transfer taxable under the provisions of this act in the same manner as though the property to which such appointment relates belonged absolutely to the donee of such power and had been bequeathed or devised by such donee by will; and whenever any person or corporation possessing such a power of appointment so derived shall omit or fail to exercise the same within the time provided therefor, in whole or in part a transfer taxable under the provisions of this act shall be deemed to take place to the extent of such omission or failure, in the same manner as though the persons or corporations thereby becoming entitled to the possession or enjoyment of the property to which such power related had succeeded thereto by a will of the donee of the power failing to exercise such power, taking effect at the time of such omission or failure.

(6) **Basis of tax.** The tax so imposed shall be upon the clear market value of such property at the rate hereinafter prescribed and only upon the excess of the exemptions hereinafter granted.

### **Nature.**

The inheritance tax is a tax upon the transfer, transaction or right to receive property. The theory is that it is not one on property, but on the right of succession. *State v. Bullen*, 143 Wis. 512, 518, 128 N. W. 109.

*The court sustains the theory of an inheritance tax* not on the power to prohibit succession, but upon the power to reasonably regulate by tax. *Nunnemacher v. State*, 129 Wis. 190, 203, 108 N. W. 6, 27, 9 L. R. A. N. S. 121.

### **Not a Property Tax. — Uniformity.**

It was claimed that because the court held in the *Nunnemacher case*, 129 Wis. 190, 108 N. W. 627, 9 L. R. A. N. S. 121, that the right to inherit a devised property was a natural right, therefore it was a property right, and hence an inheritance tax must logically be held to be a tax upon a property right and subject to the provision that it must be absolutely uniform. The court says that the conclusion does not follow; that taxes frequently are levied upon transactions or occupations which are matters of natural right, and that these matters are mere privilege taxes. *Beals v. State*, 139 Wis. 544, 556, 121 N. W. 347.

**Modeled on New York Act.**

As the Wisconsin inheritance tax law of 1903 was borrowed from New York, therefore the judicial construction given it there is significant in interpreting it in Wisconsin. *State v. Bullen*, 143 Wis. 512, 520, 128 N. W. 109.

**Exemptions and Classification by Relationship Upheld.**

Classification between lineals and collateral relatives and strangers does not violate the rule of uniformity nor the principle of equal protection of the laws; and reasonable exemption of small estates also may be allowed without violating uniformity. *Nunnemacher v. State*, 129 Wis. 190, 221, 108 N. W. 627, 9 L. R. A. N. S. 121, quoting *Black v. State*, 113 Wis. 205, 90 Am. St. Rep. 853.

As to the progressive feature of the statute of 1903, the court says that this feature has been upheld by the supreme court of the United States in the decision in *Magoun v. Illinois Trust & Savings Bank*, 170 U. S. 283, 18 Sup. Ct. 594, and *Knowlton v. Moore*, 178 U. S. 41, 20 Sup. Ct. 747, and remarks that the decision of that court is conclusive as to the fourteenth amendment to the federal constitution, and as the general equality guarantees of the Wisconsin constitution are substantially equivalent to the equal protection of the laws guaranteed by the fourteenth amendment, the court is contented to follow the decisions of the United States supreme court and hold that the progressive feature does not violate the constitution. *Nunnemacher v. State*, 129 Wis. 190, 222, 108 N. W. 627, 9 L. R. A. N. S. 121.

The court re-examines and affirms the case of *Nunnemacher v. State*, 129 Wis. 190, as to the constitutionality of the inheritance law in *Beals v. State*, 139 Wis. 544, 552, 121 N. W. 347.

**The meaning of the words "in contemplation of death,"** as used in the statute, must be inferred and ascertained from the context of the act and the object sought to be accomplished by the law. It is manifest that they were intended to cover transfers of parties who were prompted to make them by reason of the expectation of death, and which, in view of that event, accomplish transfers of the property of decedents in the nature of a testamentary disposition. It is therefore obvious that they are not used as referring to that expectation of death generally entertained by every person. The words are evidently intended to refer to an expectation of death which arises from such a bodily or mental condition as prompts persons to dispose of their property and bestow it on those whom

they regard as entitled to their bounty. This accords with the general objects and purposes of the law, namely, the imposition of a tax on the devolution of property involved in the demise of the owner." . . .

"The claim that the words can include only gifts *causa mortis* attributes to them too restricted a meaning. A transfer valid as a gift *inter vivos*, if made under circumstances which impress it with the distinguishing characteristics of being prompted by an apprehension of impending death, occasioned by a bodily or mental state which has a basis for the apprehension that death is imminent, would be a transfer made in contemplation of death within the meaning of the law." *Per* Siebecker, J., in *State v. Pabst*, 139 Wis. 561, 589, 121 N. W. 351.

#### **"In Contemplation of Death." — Evidence.**

On the question of whether a deed was made in contemplation of death, evidence was introduced as to the cause of his death — diabetes. The decedent's declaration three years before his death that in recognition of the valuable aid of his sons in building up his estate he intended to dispose of part of his estate to them was put in as evidence. But the court remarks that it is significant that he did not do so then or in the immediately succeeding years. The court remarks that considering his condition, the execution of the deed of gift and the will simultaneously indicates that he was disposing of his property to those whom he regarded as natural objects of his bounty rather than that he was transferring it to them as compensation for worthy and valuable service rendered by them. He knew his condition and was aware of the outcome to be inferred from his symptoms. The deed of gift was made about six months before his death and the court finds that the evidence abundantly sustains the conclusion of the trial court that the deed of gift was made in contemplation of death. *State v. Pabst*, 139 Wis. 561, 593, 121 N. W. 351.

*The death certificate* of the decedent's attending physician was proper evidence under Wisconsin statutes where it was introduced as evidence of its contents on the issue of whether the deed made was made in contemplation of death, in *State v. Pabst*, 139 Wis. 561, 591, 121 N. W. 351.

#### **Situs of Personal Property.**

The New York statute of which the Wisconsin statute is a copy received the construction in New York that in respect to personal

property not within the state at the time of the resident decedent's death, the court will apply the maxim *Mobilia sequuntur personam*. The effect of this rule is to make the legal situs of the property at the domicile of the decedent.

It seems to be the New York and Massachusetts rule that personal property for the purpose of taxation has its situs at the domicile of the owner and the court follows the rule of *Frothingham v. Shaw*, 175 Mass. 59, 78 Am. St. Rep. 475, 55 N. E. 623; *Estate of Cornell*, 170 N. Y. 423, 63 N. E. 445. The court remarks that *In re Joyslin*, 76 Vt. 88, 56 A. 281, appears to be out of harmony with the New York and Massachusetts rule.

So where a resident of Wisconsin, while in another state, transfers property which is then in the foreign state and which never has been in the state of Wisconsin, the situs of the property for the purpose of the tax is the state of Wisconsin and it is subject to the Wisconsin inheritance tax. *State v. Bullen*, 143 Wis. 512, 523, 128 N. W. 109.

### **Life Insurance.**

Where a life insurance policy was made payable to the wife of the decedent and she joined with him in conveying it to a trust company in trust in contemplation of death, though without giving up her rights in it, therefore this property remained the property of the wife, and was not a part of the estate of the decedent, and therefore was not subject to the inheritance tax. *State v. Bullen*, 143 Wis. 512, 523, 128 N. W. 109.

**S. 2. Primary rates where not in excess of \$25,000.** When the property or any beneficial interest therein passes by any such transfer where the amount of the property shall exceed in value the exemption hereinafter specified, and shall not exceed in value twenty-five thousand dollars the tax hereby imposed shall be:—

(1) **One per centum, where.** Where the person or persons entitled to any beneficial interest in such property shall be the husband, wife, lineal issue, lineal ancestor of the decedent or any child adopted as such in conformity with the laws of this state, or any child to whom such decedent for not less than ten years prior to such transfer stood in the mutually acknowledged relation of a parent, provided, however, such relationship began at or before the child's fifteenth birthday, and was continuous for said ten years thereafter, or any lineal issue of such adopted or mutually acknowledged child, at the rate of one per centum of the clear value of such interest in such property.

(2) **One and one-half per centum, where.** Where the person or persons entitled to any beneficial interest in such property shall be the brother or sister or a descendant of a brother or sister of the decedent, a wife or widow of a son,



or the husband of a daughter of the decedent, at the rate of one and one-half per centum of the clear value of such interest in such property.

(3) **Three per centum, where.** Where the person or persons entitled to any beneficial interest in such property shall be the brother or sister of the father or mother or a descendant of a brother or sister of the father or mother of the decedent, at the rate of three per centum of the clear value of such interest in such property.

(4) **Four per centum, where.** Where the person or persons entitled to any beneficial interest in such property shall be the brother or sister of the grandfather or grandmother or a descendant of the brother or sister of the grandfather or grandmother of the decedent, at the rate of four per centum of the clear value of such interest in such property.

(5) **Five per centum, where.** Where the person or persons entitled to any beneficial interest in such property shall be in any other degree of collateral consanguinity than is hereinbefore stated, or shall be a stranger in blood to the decedent, or shall be a body politic or corporate, at the rate of five per centum of the clear value of such interest in such property.

**S. 3. Other rates: where in excess of \$25,000.** The foregoing rates in section two are for convenience termed the primary rates. When the amount of the clear value of such property or interest exceeds twenty-five thousand dollars the rates of tax upon such excess shall be as follows: —

(1) **Rate where amount \$25,000 to \$50,000.** Upon all in excess of twenty-five thousand dollars and up to fifty thousand dollars one and one-half times the primary rates.

(2) **Rate where amount \$50,000 to \$100,000.** Upon all in excess of fifty thousand dollars and up to one hundred thousand dollars, two times the primary rates.

(3) **Rate where amount \$100,000 to \$500,000.** Upon all in excess of one hundred thousand dollars and up to five hundred thousand dollars, two and one-half times the primary rates.

(4) **Rate where amount over \$500,000.** Upon all in excess of five hundred thousand dollars, three times the primary rates.

### **Exemptions Valid.**

It was argued that section 2 provides for the taxation of the transfer of estates not exceeding in value twenty-five thousand dollars and in section 3 provides in effect that the transfer of the first twenty-five thousand dollars in an estate exceeding that sum shall not be taxed, and that only the transfer of an amount exceeding twenty-five thousand dollars shall be subject to taxation. If this were true the law would be manifestly unconstitutional. The court finds that the language of other sections of the statute forbids such a construction of sections 2 and 3. It is very significant that section 4, which provides for the exemptions, is a general sec-

tion, fixing the exemptions to be allowed in all estates both great and small, and is intended to cover the whole subject of exemptions. It is manifestly unreasonable to suppose that the legislature imagined when they provided this careful and complete code of exemptions that they had already made an enormous exemption of twenty-five thousand dollars in favor of all beneficiaries who were fortunate enough to receive more than that sum. But the first section of the act is quite conclusive, as it provides that a tax shall be imposed upon any transfer of any property or any interest therein except the exemptions. *Beals v. State*, 139 Wis. 544, 554, 121 N. W. 347.

**S. 6. Discount, rate of interest on deferred payments.** If such tax is paid within one year from the accruing thereof, a discount of five per centum shall be allowed and deducted therefrom. If such tax is not paid within eighteen months from the accruing thereof interest shall be charged and collected thereon at the rate of ten per centum per annum from the time the tax accrued; unless by reason of claims made upon the estate, necessary litigation or other unavoidable cause of delay, such tax shall not be determined and paid as herein provided, in which case interest at the rate of six per centum per annum shall be charged upon such tax from the accrual thereof until the cause of such delay is removed, after which ten per centum shall be charged. In all cases when a bond shall be given under the provisions of section 9 of this act, interest shall be charged at the rate of six per centum from the accrual of the tax, until the date of payment thereof.

*The penalty of ten per cent* should not be imposed for a three years' delay when it was uncertain during that time whether or not the transfer by a deed of gift was subject to taxation as to the amount of stock included in it and the value of the stock transferred. *State v. Pabst*, 139 Wis. 561, 595, 121 N. W. 351.

**S. 12. Jurisdiction of county court: petition for ancillary letters.** The county court of every county of the state having jurisdiction to grant letters testamentary or of administration upon the estate of a decedent whose property is chargeable with any tax under this act, or to appoint a trustee of such estate or any part thereof, or to give ancillary letters thereon, shall have jurisdiction to hear and determine all questions arising under the provisions of this act, and to do any act in relation thereto authorized by law to be done by a county court in other matters or proceedings coming within its jurisdiction, and if two or more county courts shall be entitled to exercise any such jurisdiction, the county court first acquiring jurisdiction hereunder, shall retain the same to the exclusion of every other county court. Every petition for ancillary letters testamentary or ancillary letters of administration made in pursuance of the laws governing probate practice of a person to be cited as therein prescribed, and a true and correct statement of all the decedent's property in this state, and the value

thereof; and upon presentation thereof the county court shall issue a citation directed to such county treasurer; and upon the return of the citation, the county court shall determine the amount of the tax which may be or become due under the provisions of this act, and his decree awarding the letters may contain any provisions for the payment of such tax or the giving of security therefor which might be made by such county court if the county treasurer were a creditor of deceased.

It was claimed that this act is unconstitutional because it commits the appraisal of property and the fixing of the amount of the tax to the county court, and these are claimed to be administrative and not judicial duties. The court replies that this is not so, that the court simply determines in a judicial way certain facts necessary to be ascertained to determine how much the tax fixed by the law amounts to in a given case. These duties are judicial in their character and very properly entrusted to the county court in which the estate is being administered. *Nunnemacher v. State*, 129 Wis. 180, 223, 108 N. W. 627, 9 L. R. A. N. S. 121.

Sections 12 and 15 do not give to the county court the authority to order the corporation in which the decedent was a stockholder to produce its private books, papers and documents for inspection to enable the court to determine the value of the estate of the decedent and the amount of the tax to which the same is liable. The court finds that such supposed entries and statements made in the books, papers and documents of the corporation by its officers or agents have no more probative force as evidence in court, in the controversy between the executors and the state of Wisconsin, than oral declarations to the same effect, made by the same officers and agents, would have had. Such entries and statements were obviously mere hearsay made by third parties without the sanction of an oath. There is nothing in the statute authorizing the county court, whether acting as a judicial tribunal or as an appraiser, to compel a third party to produce his private books, papers and documents, and certainly the county court has no such power in the absence of statutory authority. A writ of prohibition against the proceedings in the county court was granted. *State v. Carpenter*, 129 Wis. 180, 108 N. W. 641, 8 L. R. A. N. S. 788.

### **Refunding.**

Under the terms of Wisconsin statutes of 1898, section 3200, one who has paid an inheritance tax under protest may bring action, although he has not appealed from the order of the county court fixing the tax and assessing the same. It is claimed that the

order of the county court rendered the assessment of the tax *res judicata*. Although the court acts on these matters in a judicial manner they are really but steps in the enforcement of the tax law of the state rather than a judgment in a judicial controversy. *Beals v. State*, 139 Wis. 544, 552, 121 N. W. 347.

**S. 13. Transfer subject to contingent trusts.** (5) When property is transferred in trust or otherwise, and the rights, interests or estates of the transferees are dependent upon contingencies or conditions whereby they may be wholly or in part created, defeated, extended or abridged, a tax shall be imposed upon such transfer at the highest rate which, on the happening of any of the said contingencies or conditions would be possible under the provisions of this act, and such tax so imposed shall be due and payable forthwith out of the property transferred, provided, however, that on the happening of any contingency whereby the said property or any part thereof is transferred to a person or corporation exempt from taxation under the provisions of this act or to a person taxable at a less rate than the rate imposed and paid, such person or corporation shall be entitled to a return of so much of the tax imposed and paid as is the difference between the amount paid and the amount which said person or corporation should pay under the provisions of this act with legal interest from the time of payment. Such return of overpayment shall be made in the manner provided by section 8 of this act.

### **Tax on Contingent Estates Upheld.**

It was claimed that Wisconsin statute of 1903, c. 44, as amended by the statute of 1903, c. 249, is invalid as it attempts to impose a tax on transfers limited to vest on contingencies which may never happen, or to persons not in being or ascertainable, and making the tax due and payable forthwith out of the property transferred, by compelling parties to pay such tax on defeasible estates which they may never own and in contemplating the payment of penalties before any opportunity is offered to pay the tax. The court replies that the law does not operate to enforce the assessment and payment of the tax on interests or estates not vested, or on those whose value cannot be ascertained by reason of the uncertainties of contingencies. Payment of the tax on such transfers is expressly postponed until the beneficiary comes into the actual possession or enjoyment thereof.

The claim that the present owners of defeasible estates are compelled to pay the tax on the whole estate is not well founded, for provision is made for reimbursing them should it happen that such estates and interests should be abridged, defeated or diminished. Section 13, subdivision 3. *State v. Pabst*, 139 Wis. 561, 857, 121 N. W. 351.

**Contingent Interests.**

The will provided that if E. S. should have no issue of the age of ten years living at the time of the death of the life tenant, then the interest on the estate transferred to her should remain in trust and only the income should be paid to her until she should have a child of the age of ten years. If no child of hers shall attain this age, then she is to receive only the income of estate.

The conditions of this transfer are governed by the provisions of section 13, subdivision 5, because her rights are dependent upon contingencies which may extend and change her interest in the estate from a life estate to one in fee.

Wis. statute of 1903, c. 44, section 13, subdivision 5, as amended by statute of 1903, c. 249, section 2, provides that such a transfer shall be taxed at the lowest possible rate under the conditions on which it passes at the time of transfer, and that the tax shall be due and payable forthwith out of the property so transferred. She was properly taxed the same rate as would be imposed if her brothers and sisters should eventually be entitled. In the event that the beneficiary shall enjoy no more than a life interest she will be entitled to be reimbursed in the manner above indicated out of the corpus of the share so transferred to her. *State v. Pabst*, 39 of Wis. 561, 589, 121 N. W. 351.

**Annuity Deducted.**

Where a will provides that beneficiaries may take property and its income subject to annual payments to the widow unless she exercise an option to take a portion of the estate in lieu thereof, and to similar payments for the support of the child during minority, there is nothing in these conditions which postpones their right to the property or income thereof from the time of death. The law provides means of calculating the value of the interest of the widow and the child and hence the fair market value of the remainder of the estate and the other interests was ascertainable. *State v. Pabst*, 139 Wis. 561, 588, 121 N. W. 351.

**S. 15. Report of appraiser: county court to give notice.** (1) The report of the appraiser shall be made in duplicate, one of which duplicates shall be filed in the office of the county court and the other in the office of the secretary of state. Upon filing such report in the county court, the county court shall forthwith give twenty days' notice by mail to all persons known to be interested in the estate, including the county treasurer, of the time and place for the hearing in the matter of such report and the county court from such report and other proofs relating to any such estate shall forthwith at the time so fixed, determine

the cash value of such estate and the amount of tax to which the same is liable, or the county court without appointing an appraiser upon giving twenty days, notice by mail to all persons known to be interested in the estate including the county treasurer, of the time and place of hearing, may at the time so fixed hear evidence and determine the cash value of such estate and the amount of tax to which the same is liable. If the residence or post-office address of any person interested in any estate is unknown to the executor, administrator or trustee, notice of the hearing in the matter of the report of the appraiser or notice that the county court without appointing an appraiser will determine the cash value of an estate shall be given to all such persons by publication of such notice not less than three successive weeks prior to the time fixed for such hearing or determination in such newspaper published within the county as the court shall direct.

### **Valuation of Stock.**

Certain stock was valued at \$1,150 per share and the county court valued it at \$1,408.45 per share, the face value being \$1,000 per share. The law requires that the tax should be assessed on the clear market value of the property. It appeared that there had been no sales of the stock in the market, but that the decedent had dealt with the stock on the basis of its book value, and the transfers shown were apparently made in reliance on the book value. Evidence was introduced showing the dividends declared and paid for a period of years before the death of the testator, and the value of the corporation assets during that time. In the deed of gift the decedent declared the book value of 2,840 shares of stock to be four million dollars.

The court finds that the facts regarding the business of the corporation and its property furnish a basis for valuation, and are sufficient to sustain the conclusion of the trial court. *State v. Pabst*, 139 Wis. 561, 594, 121 N. W. 351.

### **THE AMENDMENTS OF 1903.**

Wis. St. 1903, c. 249, published May 16, 1903, amends Wis. St. 1903, c. 44, ss. 1 and 13. (See *post*, p. 1220, the Present Act.)

Wis. St. 1903, c. 297, provides for the refund of inheritance taxes received by the state under the void acts of 1899 and 1901, provided that petitions for the repayment of these taxes should be filed with the county court within two years after the act was passed.

### **RECENT AMENDMENTS.**

Wis. St. 1905, c. 96, amends Wis. St. 1903, c. 44, s. 1, by exempting gifts to municipal corporations for strictly municipal purposes.

Wis. St. 1905, c. 96, s. 2, includes in the exemption property transferred to municipal corporations for strictly municipal purposes.

Wis. St. 1905, c. 96, s. 3. This statute is made retroactive and extends the exemption to any transfer of property heretofore made to any municipal corporation within the state for strictly municipal purposes.

Wis. St. 1907, c. 500, approved July 9, 1907, covers the appointment of special counsel by the attorney general.

Wis. St. 1909, c. 38, approved April 10, 1907, published April 14, 1909, amends Wis. St. s. 3871, relating to computations of life estates.

Wis. St. 1907, c. 660, approved July 16, 1907 (s. 3813a), provides that a special administrator may be appointed on the estate of a resident deceased person and *prima facie* inventory, appraisal and heirship determination had thereunder for the purpose of having inheritance taxes determined and paid; and of having *prima facie* certificate of real estate issued in cases where it appears the estate may come under the provisions of the inheritance tax laws.

Wis. St. 1909, c. 504, approved June 16, 1909, in force from and after July 1, 1909, amends Wis. St. ss. 1087-5, 6, 7, 8, 11, 12, 13, 14, 15; repeals and re-enacts s. 17; repeals s. 18; amends ss. 19, 20, 21, 22, 23, 24; and also amends s. 3818.

Wis. St. 1911, c. 450, in effect June 27, 1911, added section 1087-18, conferring certain duties on the tax commission.

Wis. St. 1911, c. 530, in effect July 5, 1911, amended ss. 1087-4, 11, 12, 15 subd. 5, 9, and created s. 1087-11m.

## THE PRESENT ACT.

Wis. St., ss. 1087-1 to 1087-24 inclusive, 162, 3813a, 3818 and 3871a.

### Tax on Transfers: Exceptions.

S. 1087-1. (Sec. 1, ch. 44, and sec. 1, ch. 249, 1903, and sec. 1, ch. 96, 1905.) A tax shall be and is hereby imposed upon any transfer of property real, personal or mixed, or any interest therein, or income therefrom in trust or otherwise, to any person, association, or corporation, except county, town or municipal corporations within the state, for strictly county, town or municipal purposes, and corporations of this state organized under its laws solely for religious, charitable or educational purposes, which shall use the property so transferred exclusively for the purposes of their organization within the state in the following cases:

(1) **By a resident of state.** When the transfer is by will or by the intestate laws of this state from any person dying possessed of the property while a resident of the state.

(2) **Non-resident's property within state.** When a transfer is by will or intestate law, of property within the state or within its jurisdiction and the decedent was a non-resident of the state at the time of his death.

(3) **In contemplation of death.** When the transfer is of property made by a resident or by a non-resident when such non-resident's property is within this state, or within its jurisdiction, by deed, grant, bargain, sale or gift, made in contemplation of the death of the grantor, vendor or donor, or intended to take effect in possession or enjoyment at or after such death.

(4) **Imposed when beneficially transferred.** Such tax shall be imposed when any such person or corporation becomes beneficially entitled, in possession or expectancy, to any property or the income thereof, by any such transfer whether

made before or after the passage of this act; provided, that property or estates which have vested in such persons or corporations before this act takes effect, shall not be subject to the tax; and provided further, that contingent interests created by the will of any person who died prior to the passage of this act shall not be taxes.

(5) **Transfer under power of appointment.** Whenever any person or corporation shall exercise a power of appointment derived from any disposition of property made either before or after the passage of this act, such appointment when made shall be deemed a transfer taxable under the provisions of this act in the same manner as though the property to which such appointment relates belonged absolutely to the donee of such power and had been bequeathed or devised by such donee by will; and whenever any person or corporation possessing such a power of appointment so derived shall omit or fail to exercise the same within the time provided therefor, in whole or in part, a transfer taxable under the provisions of this act shall be deemed to take place to the extent of such omission or failure, in the same manner as though the persons or corporations thereby becoming entitled to the possession or enjoyment of the property to which such power related had succeeded thereto by a will of the donee of the power failing to exercise such power, taking effect at the time of such omission or failure.

(6) **On clear market value.** The tax so imposed shall be upon the clear market value of such property at the rate hereinafter prescribed and only upon the excess of the exemptions hereinafter granted.

[As to validity, see notes to the acts of 1868, 1889, 1899, 1901, 1903, *ante*, pp. 1203, 1207, 1210.]

### **Right of Descent Protected.**

The court holds that the right to take property by inheritance or by will is a natural right protected by the constitution, which cannot be wholly taken away or substantially impaired by the legislature.

The court remarks that it is fully aware that the contrary proposition has been stated by the great majority of the courts of this country, including the supreme court of the United States, in *Magoun v. Illinois Trust & Savings Bank*, 170 U. S. 283, 18 S. Ct. 594. The court quotes from *Eyre v. Jacob*, 14 Gratt. 422, and *Pullen v. Comm'rs*, 66 N. C. 267, in which latter case the following language was used: "Property itself, as well as the succession to it, is the creature of positive law. The legislative power declares what objects in nature may be held as property; it provides by what forms and on what conditions it may be transmitted from one person to another; it confines the right of inheriting to certain persons whom it defines as heirs; and on the failure of such it takes the property to the state as an escheat. The right to give or take property is not one of those natural and inalienable rights which are supposed to precede all government and which no government can rightfully impair."



The court remarks that the unanimity with which the proposition is stated is only equaled by the paucity of reasoning by which it is supported, and says that the declaration of the court of North Carolina seems to have reached the logical goal toward which the other cases only tend, namely, the denial of all natural rights of property. It comes perilously near the doctrine that might makes right.

The court quotes from Mr. Justice Brown, *United States v. Perkins*, 163 U. S. 625, 16 Sup. Ct. 1073, where he says: "The general consent of the most enlightened nations has from the earliest historical period recognized a natural right in children to inherit the property of their parents."

The court notices the difference between our theory of government that political rights flow from the people and the mediæval theory that political rights flow from the crown, and remarks that this difference makes the European cases of no value in this country. The court remarks after discussion: —

"So clear does it seem to us from the historical point of view that the right to take property by inheritance or will has existed in some form among civilized nations from the time when the memory of man runneth not to the contrary, and so conclusive seems the argument that these rights are a part of the inherent rights which governments, under our conception, are established to conserve, that we feel entirely justified in rejecting the dictum so frequently asserted by such a vast array of courts that these rights are purely statutory and may be wholly taken away by the legislature.

"It is true that these rights are subject to reasonable regulation by the legislature, lines of descent may be prescribed, the persons who can take as heirs or devisees may be limited, collateral relatives may doubtless be included or cut off, the manner of the execution of wills may be prescribed, and there may be much room for legislative action in determining how much property shall be exempted entirely from the power to will, so that dependents may not be entirely cut off. These are all matters within the field of regulation. The fact that these powers exist and have been universally exercised affords no ground for claiming that the legislature may abolish both inheritances and wills, turn every fee-simple title into a mere estate for life, and thus, in effect, confiscate the property of the people once every generation."

The court quotes with approval *Minot v. Winthrop*, 162 Mass.

113, 26 L. R. A. 259, 38 N. E. 512, to the effect "that the legislature cannot so far restrict the right to transmit property by will or by descent as to amount to an appropriation of property generally; that it cannot impose a tax which shall be equivalent or almost equivalent to the value of the property, and cannot so limit the persons who can take as heirs, devisees, distributees, or legatees that the great mass of all the property of the inhabitants become vested in the commonwealth by escheat." *Nunnemacher v. State*, 120 Wis. 190, 198, 108 N. W. 627, 9 L. R. A. N. S. 121. See notes to the act of 1903, *ante*, p. 1210.

**Primary Rates, Where not in Excess of \$25,000.**

S. 1087-2. (Sec. 2, ch. 44, 1903.) When the property or any beneficial interest therein passes by any such transfer where the amount of the property shall exceed in value the exemption hereinafter specified, and shall not exceed in value twenty-five thousand dollars the tax hereby imposed shall be:—

(1) **One per centum, where.** Where the person or persons entitled to any beneficial interest in such property shall be the husband, wife, lineal issue, lineal ancestor of the decedent or any child adopted as such in conformity with the laws of this state, or any child to whom such decedent for not less than ten years prior to such transfer stood in the mutually acknowledged relation of a parent, provided, however, such relationship began at or before the child's fifteenth birthday, and was continuous for said ten years thereafter, or any lineal issue of such adopted or mutually acknowledged child, at the rate of one per centum of the clear value of such interest in such property.

(2) **One and one-half per centum, where.** Where the person or persons entitled to any beneficial interest in such property shall be the brother or sister or a descendant of a brother or sister of the decedent, a wife or widow of a son, or the husband of a daughter of the decedent, at the rate of one and one-half per centum of the clear value of such interest in such property.

(3) **Three per centum, where.** Where the person or persons entitled to any beneficial interest in such property shall be the brother or sister of the father or mother of the decedent, at the rate of three per centum of the clear value of such interest in such property.

(4) **Four per centum, where.** Where the person or persons entitled to any beneficial interest in such property shall be the brother or sister of the grandfather or grandmother or a descendant of the brother or sister of the grandfather or grandmother of the decedent, at the rate of four per centum of the clear value of such interest in such property.

(5) **Five per centum, where.** Where the person or persons entitled to any beneficial interest in such property shall be in any other degree of collateral consanguinity than is hereinbefore stated, or shall be a stranger in blood to the decedent, or shall be a body politic or corporate, at the rate of five per centum of the clear value of such interest in such property.

[See notes to the Act of 1903, *ante*, p. 1214.]

**Other Rates: Where in Excess of \$25,000.**

S. 1087-3. (Sec. 3, ch. 44, 1903.) The foregoing rates in section two (1087-2) are for convenience termed the primary rates.

When the amount of the clear value of such property or interest exceeds twenty-five thousand dollars, the rates of tax upon such excess shall be as follows: —

(1) **Rate where amount \$25,000 to \$50,000.** Upon all in excess of twenty-five thousand dollars and up to fifty thousand dollars, one and one-half times the primary rates.

(2) **Rate where amount \$50,000 to \$100,000.** Upon all in excess of fifty thousand dollars and up to one hundred thousand dollars, two times the primary rates.

(3) **Rate where amount \$100,000 to \$500,000.** Upon all in excess of one hundred thousand dollars and up to five hundred thousand dollars, two and one-half times the primary rates.

(4) **Rate where amount over \$500,000.** Upon all in excess of five hundred thousand dollars, three times the primary rates.

[See notes to the Act of 1903, *ante*, p. 1214.]

**Exemptions.**

S. 1087-4. The following exemptions from the tax, to be taken out of the first twenty-five thousand dollars, are hereby allowed: —

(1) All property transferred to municipal corporations within the state for strictly county, town, or municipal purposes, or to corporations of this state organized under its laws, solely for religious, charitable, or educational purposes, which shall use the property so transferred, exclusively for the purposes of their organization, within the state, shall be exempt.

. . . The inheritance tax laws shall not be held applicable to any transfer of property heretofore made to any county, town, or municipal corporation within the state, for strictly municipal purposes.

(2) Property of the clear value of ten thousand dollars transferred to the widow of the decedent, and two thousand dollars transferred to each of the other persons described in the first subdivision of section . . . 1087-2 shall be exempt.

(3) Property of the clear value of five hundred dollars transferred to each of the persons described in the third subdivision of section . . . 1087-2 shall be exempt.

(4) Property of the clear value of two hundred and fifty dollars transferred to each of the persons described in the third subdivision of section 1087-2 shall be exempt.

(5) Property of the clear value of one hundred and fifty dollars transferred to each of the persons described in the fourth subdivision of section . . . 1087-2 shall be exempt.

(6) Property of the clear value of one hundred dollars transferred to each of the persons and corporations described in the fifth subdivision of section . . . 1087-2 shall be exempt.

(As amended by St. 1911, c. 530.)

[See notes to the Act of 1903, *ante*, p. 1214.]

**Tax to be a Lien on Property; Where Paid; When Due.**

S. 1087-6. (Sec. 5, ch. 44, 1903, and Sec. 1, ch. 504, 1909.) (1) Every such tax shall be and remain, a lien upon the property transferred until paid and the person to whom the property is transferred and the administrators, executors, and trustees of every estate so transferred, shall be personally liable for such tax until its payment.

(2) **County Treasurer makes Duplicate Receipts.** The tax shall be paid to the treasurer of the county in which the county court is situated having jurisdiction as herein provided; and said treasurer shall make duplicate receipts . . . of such payment, one of which he shall immediately send to the . . . state treasurer, whose duty it shall be to charge the county treasurer so receiving tax, with the amount thereof, and . . . the other receipt shall be delivered to the executor, administrator, or trustee, whereupon it shall be a proper voucher in the settlement of his accounts.

(3) **Final Accounting on filing Receipt.** But no executor, administrator, or trustee shall be entitled to a final accounting of an estate, in settlement of which a tax is due under the provisions of this act, unless he shall produce . . . such receipt(s) . . . or a certified copy thereof . . . or unless a bond shall have been filed as prescribed by section 1087-9. . . .

(4) **Tax due at time of transfer.** All taxes imposed by this act shall be due and payable at the time of the transfer, except as hereinafter provided. Taxes upon the transfer of any estate, property, or interest therein, limited, conditioned, dependent, or determinable upon the happening of any contingency or future event, by reason of which the fair market value thereof cannot be ascertained at the time of transfer, as herein provided, shall accrue and become due and payable when the beneficiary shall come into actual possession or enjoyment thereof.

**Discount or Penalty, When.**

S. 1087-6. (Sec. 6, ch. 44, 1903, and Sec. 2, ch. 504, 1909.) If such tax is paid within one year from the accruing thereof, a discount of five per centum shall be allowed and deducted therefrom. If such tax is not paid within eighteen months from the accruing thereof, interest shall be charged and collected thereon at the rate of ten per centum per annum from the time the tax accrued; unless by reason of claims made upon the estate, necessary litigation or other unavoidable cause of delay, such tax shall not be determined and paid as herein provided, in which case interest at the rate of six per centum per annum shall be charged upon such tax from the accrual thereof until the cause of such delay is removed, after which ten per centum shall be charged. In all cases when a bond shall be given under the provisions of section 1087-9, . . . interest shall be charged at the rate of six per centum from the accrual of the tax, until the date of payment thereof.

[See notes to the Act of 1903, *ante*, p. 1215.]

**Powers of Executors, etc.; Where Legacy not in Money.**

S. 1087-7. (Sec. 7, ch. 44, 1903, and Sec. 3, ch. 504, 1909.) Every executor, administrator, or trustee shall have full power to sell so much of the property of the decedent as will enable him to pay such tax in the same manner as he might

be entitled by law to do for the payment of the debts of the testator or intestate. Any such administrator, executor, or trustee having in charge or in trust any legacy or property for distribution, subject to such tax, shall deduct the tax therefrom; and within thirty days therefrom shall pay over the same to the county treasurer, as herein provided. If such legacy or property be not in money, he shall collect the tax thereon upon the appraised value thereof, from the person entitled thereto. He shall not deliver or be compelled to deliver any specific legacy or property subject to tax under this act, to any person until he shall have collected the tax thereon. If any such legacy shall be charged upon or payable out of real property, the heir or devisee shall deduct such tax therefrom and pay it to the administrator, executor, or trustee, and the tax shall remain a lien or charge on such real property until paid, and the payment thereof shall be enforced by the executor, administrator, or trustee in the same manner that payment of the legacy might be enforced, or by the district attorney under section 1087-16. . . . If any such legacy shall be given in money to any such person for a limited period, the administrator, executor, or trustee shall retain the tax upon the whole amount, but if it be not in money, he shall make application to the court having jurisdiction of an accounting by him to make an apportionment if the case require it, of the sum to be paid into his hands by such legatees, and for such further order relative thereto as the case may require.

**Subsequent Debts; State Treasurer may Refund Tax.**

S. 1087-8. (Sec. 8, ch. 44, 1903, and Sec. 4, ch. 504, 1909.) (1) If any debt shall be proved against the estate of the decedent after the payment of any legacy or distributive share thereof, from which any such tax has been deducted, or upon which it has been paid by the person entitled to such legacy or distributive share, and such person is required by the order of the county court having jurisdiction thereof on notice to the . . . state treasurer to refund the amount of such debts or any part thereof, an equitable proportion of the tax shall be repaid to such person . . . by the executor, administrator, . . . trustee, . . . or officer to whom said tax has been paid.

(2) **How refund of tax made.** When any amount of said tax shall have been paid erroneously into the state treasury, it shall be lawful for the . . . state treasurer upon . . . receiving a transcript from the county court record showing the facts to refund . . . the amount of such erroneous or illegal payment to . . . the executor, administrator, trustee, person, or persons who have paid any such tax in error, from the treasury; or the said . . . state treasurer may order, direct, and allow the treasurer of any county to refund the amount of any illegal or erroneous payment of such tax out of the funds in his hands or custody to the credit of such taxes, and credit him with the same in his quarterly account rendered to the . . . state treasurer under this act. Provided, however, that all applications for such refunding of erroneous taxes shall be made within one year from the payment thereof, or within one year after the reversal or modification of the order fixing such tax.

**Bond for Payment of Legacies not in Possession.**

S. 1087-9. (Sec. 9, ch. 44, 1903.) Any beneficiary of any property chargeable with a tax under this act, and any executors, administrators and trustees thereof, may elect, within eighteen months from the date of the transfer thereof as herein

provided, not to pay such tax until the person or persons beneficially interested therein shall come into the actual possession or enjoyment thereof. The person or persons so electing shall give a bond to the state in a penalty of three times the amount of any such tax, with such sureties as the county court of the proper county may approve, conditioned for the payment of such tax and interest thereon, at such time or period as the person or persons beneficially interested therein may come into the actual possession or enjoyment of such property, which bond shall be filed in the county court. Such bond must be executed and filed and a full return of such property upon oath made to the county court within one year from the date of such transfer thereof as herein provided, and such bond must be renewed every five years

#### **Requests to Executors for Services.**

S. 1087-10. (Sec. 10, ch. 44, 1903.) If a testator bequeaths property to one or more executors or trustees in lieu of their commissions or allowances, or makes them his legatees to an amount exceeding the commissions or allowances prescribed by law for an executor or trustee, the excess in value of the property so bequeathed, above the amount of commissions or allowances prescribed by law in similar cases, shall be taxable by this act.

#### **Transfer of Stock by Foreign Executors.**

S. 1087-11. (1) If a foreign executor, administrator, or trustee shall assign or transfer any stock or obligations in this state, standing in the name of a decedent or in trust for a decedent, liable to any such tax, the tax shall be paid to the treasurer of the proper county or the state treasurer on the transfer thereof.

(2) No safe deposit company, bank, or other institution, person or persons, holding securities or assets of a non-resident decedent, nor any foreign or domestic corporation doing business within this state in which a non-resident decedent held stock at his decease, shall deliver or transfer the same to the executors, administrators, or legal representatives of said decedent, or upon their order or request, unless notice of the time and place of such intended transfer be served upon the attorney general at least ten days prior to the said transfer; nor shall any such safe deposit company, bank, or other institution, person or persons, nor any such foreign or domestic corporation, deliver or transfer any securities or assets of the estate of a non-resident decedent without retaining a sufficient portion or amount thereof to pay any tax which may thereafter be assessed on account of the transfer of such securities or assets under the provisions of . . . the inheritance tax laws, without an order from the proper court authorizing such transfer; and it shall be lawful for the attorney general or public administrator personally or by representative, to examine said securities or assets at . . . any time . . . before such delivery or transfer. Failure to serve such notice or to allow such examination or to retain a sufficient portion or amount to pay such tax as herein provided, shall render said safe deposit company, trust company, bank, or other institution, person or persons, or such foreign or domestic corporation, liable to the payment of the tax due upon said securities or assets in the pursuance of the provisions of . . . the inheritance tax laws. (As amended by St. 1911, c. 530.)

**Compromise of Tax.**

S. 1087-11m. All claims for taxes, under the inheritance tax laws, on account of any transfer by any non-resident decedent, which accrued prior to the passage of this act, may be compounded, settled, and adjusted by the attorney general, subject to the approval of the governor and tax commission, upon such terms as may by them be deemed equitable and for the best interests of the state. (Added by St. 1911, c. 530.)

**Jurisdiction. — Ancillary Letters.**

S. 1087-12. (1) The county court of every county of the state having jurisdiction to grant letters testamentary or of administration upon the estate of a decedent whose property is chargeable with any tax under . . . the inheritance tax laws, or to appoint a trustee of such estate or any part thereof, or to give ancillary letters thereon, shall have jurisdiction to hear and determine all questions arising under the provisions of . . . the inheritance tax laws and to do any act in relation thereto authorized by law to be done by a county court in other matters or proceedings coming within its jurisdiction; and if two or more county courts shall be entitled to exercise any such jurisdiction, the county court first acquiring jurisdiction hereunder, shall retain the same to the exclusion of every other county court.

(2) Every petition for ancillary letters testamentary or of administration shall include the public administrator as a person to be notified, and a true and correct statement of all the decedent's property in this state with the value thereof; upon presentation thereof, the county court shall cause the order for hearing to be served personally upon the public administrator; and upon the hearing, the county court shall determine the amount of the inheritance tax which may be or become due, and the decree awarding the letters may contain provisions for the payment of such tax or the giving of security therefor.

S. 3. (3) The county court and the judge thereof at the seat of government shall have jurisdiction to hear and determine, as other matters not appertaining to its regular probate business, all questions relating to the determination and adjustment of inheritance taxes in the estates of non-resident decedents in which it does not otherwise appear necessary for regular administration to be had therein. And in such estates the public administrator may be appointed as special administrator for the purposes of such adjustment. The county treasurer shall retain for the use of the county out of all such taxes paid and accounted for, only one per cent, and the balance, less the statutory expenses of collection and adjustment as fixed by the court, shall be paid into the state treasury; provided, however, that the minimum fee to which the county shall be entitled shall be five dollars in each case and that in no case shall the maximum fee exceed five hundred dollars. (As amended by St. 1911, c. 530.)

[See notes to the Act of 1903, *ante*, p. 1216.]

**Special Appraiser may be Appointed.**

S. 1087-13. (Sec. 13, ch. 44, 1903, Sec. 2, ch. 249, 1903, and Sec. 7, ch. 504-1909.) (1) The county court upon the application of any interested party including the attorney general and public administrator . . . or upon . . . its own motion, shall as often as, and whenever occasion may require appoint a

competent person as special appraiser to fix the fair market value at the time of the transfer thereof of the property of persons whose estate shall be subject to the payment of any tax imposed by this act.

**(2) Appraisal at clear market value; annuities, how computed.**

Whenever a transfer of property is made upon which there is, or in any contingency there may be, a tax imposed, such property shall be appraised at its clear market value immediately upon the transfer or as soon thereafter as practicable. The value of every future or limited estate, income, interest, or annuity dependent upon any life or lives in being, shall be determined by the rule, method, and standard of mortality and value employed by the commissioner of insurance in ascertaining the value of policies of life insurance and annuities for the determination of liabilities of life insurance companies except that the rate of interest for making such computations shall be five per centum per annum. . . .

[See notes to the Act of 1903, *ante*, p. 1216.]

**(3) Contingent incumbrances.** In estimating the value of any estate or interest in property to the beneficial enjoyment or possession whereof there are persons or corporations presently entitled thereto, no allowance shall be made in respect of any contingent incumbrance thereon, nor in respect of any contingency upon the happening of which the estate or property or some part thereof, or interest therein, might be abridged, defeated, or diminished; provided, however, that in the event of such incumbrance taking effect as an actual burden upon the interest of the beneficiary or in the event of the abridgement, defeat, or diminution of such estate or property or interest therein as aforesaid, a return shall be made to the person properly entitled thereto of a proportionate amount of such tax in respect of the amount or value of the incumbrance when taking effect or so much as will reduce the same to the amount which would have been assessed in respect of the actual duration or extent of the estate or interest enjoyed. Such return of tax shall be made in the manner provided in section . . . 1087-8.

**(4) Tax when subject to charge determinable by death.** Where any property shall after the passage of this act be transferred subject to any charge, estate, or interest determinable by the death of any person or at any period ascertainable only by reference to death, the increase of benefit accruing to any person or corporation upon the extinction or determination of such charge, estate or interest shall be deemed a transfer of property taxable under the provisions of this act in the same manner as though the person or corporation beneficially entitled thereto had then acquired such increase of benefit from the person from whom the title to their respective estates or interests is derived.

[See notes to the Act of 1903, *ante*, p. 1218.]

**(5) Contingent trusts taxed primarily at lowest rate.** When property is transferred in trust or otherwise, and the rights, interests, or estates of the transferees are dependent upon contingencies or conditions whereby they may be wholly or in part created, defeated, extended, or abridged, a tax shall be imposed upon such transfer at the lowest rate which on the happening of any of the said contingencies or conditions would be possible under the provisions of this act, and such tax so imposed shall be due and payable forth with out of the property transferred; provided, however, that on the happening of any contingency or condition whereby the said property or any part thereof is trans-



ferred to a person or corporation, which under the provisions of this act is required to pay a tax at a higher rate than the tax imposed, then such transferee shall pay the difference between the tax imposed and the tax at the higher rate, and the amount of such increased tax shall be enforced and collected as provided in this act.

[See notes to the Act of 1903, *ante*, p. 1218.]

(8) **Contingent or defeasible estates in expectancy.** Estates in expectancy which are contingent or defeasible and in which proceedings for determination of the tax have not been taken or where the taxation thereof has been held in abeyance shall be appraised at their full undiminished clear value when the persons entitled thereto shall come into the beneficial enjoyment or possession thereof without diminution for or on account of any valuation theretofore made of the particular estates for purposes of taxation upon which said estates in expectancy may have been limited. Where an estate for life or for years can be divested by the act or omission of the legatee or devisee, it shall be taxed as if there were no possibility of such divesting.

[See notes to the Act of 1903, *ante*, p. 1217.]

#### **Notice by and Duty of Special Appraiser; Compensation.**

S. 1087-14. (Sec. 14, ch. 44, 1903, and Sec. 8, ch. 504, 1909.) Every such appraiser shall forthwith give notice by mail to all persons known to have a claim or interest in the property to be appraised, including the public administrator . . . and to such persons as the county court may by order direct, of the time and place when he will appraise such property. He shall, at such time and place, appraise the same at its fair market value, as herein prescribed, and for that purpose the said appraiser is authorized to issue subpoenas and to compel the attendance of witnesses before him and to take the evidence of such witnesses under oath concerning such property and the value thereof; and he shall make report thereof and of such value in writing, to the said county court, together with the depositions of the witnesses examined, and such other facts in relation thereto and to the said matter as the said county court may order or require. Every appraiser shall be paid on the certificate of the county court at the rate of three dollars per day for every day actually and necessarily employed in such appraisal, and his actual and necessary traveling expenses and the fees paid such witnesses, which fees shall be the same as those now paid to witnesses subpoenaed to attend in courts of record, by the county treasurer out of any funds he may have in his hands on account of any tax imposed under the provisions of this act.

#### **Report of Special Appraiser; Notice for Hearing.**

S. 1087-15. (Sec. 15, ch. 44, 1903, and Sec. 9, ch. 504, 1909.) (1) The report of the special appraiser shall be made in duplicate, one of which duplicates shall be filed in the office of the county court and the other in the office of the attorney general. . . Upon filing such report, . . . the county court shall forthwith give twenty days' notice by mail to all persons known to be interested in the estate, including the attorney general and public administrator . . . of the time and place for the hearing in the matter of such report, and the county court, from such report and other proofs relating to any such estate, shall forthwith at the

time so fixed, determine the cash value of such estate and the amount of tax to which the same is liable.

(2) **Or hearing by court without appointing special appraiser.** Or the county court without appointing such . . . appraiser upon giving twenty days' notice by mail to all persons known to be interested in the estate, including the attorney general and public administrator. . . of the time and place of hearing, may at the time so fixed hear evidence and determine the cash value of such estate and the amount of tax to which the same is liable. If the residence or post-office address of any person interested in any estate is unknown to the executor, administrator, or trustee, notice of the hearing in the matter of the report of the appraiser or notice that the county court without appointing such . . . appraiser will determine the cash value of an estate, shall be given to all such persons by publication of such notice not less than three successive weeks prior to the time fixed for such hearing or determination in such newspaper published within the county as the court shall direct.

(3) **Additional third appraiser to represent county and state at original appraisal.** If the county court without appointing such special appraiser decide to hear evidence as to the cash value of the estate for inheritance tax purposes, the court may, at the time of the appointment of the regular appraisers of the estate, on its own motion, designate an additional third appraiser to represent the county and state, and such additional appraiser shall report the inventory and appraisal of said property with the other appraisers; or, in case of failure to agree, in a separate report, and be entitled to compensation of three dollars per day for each day necessarily employed in such appraisal and his mileage, which fees shall be paid on the certificate of the county judge by the county treasurer out of any of the state's inheritance tax funds he may have in his possession.

(4) **Commissioner of insurance to value future estates, etc.** The commissioner of insurance shall on application of any county court determine the value of any such future or contingent estates, income, or interests therein, limited, contingent, dependent, or determinable upon the life or lives of the person or persons in being upon the facts contained in such special appraiser's report or upon the facts contained in the county court's finding and determination and certify the same to the county court, and his certificate shall be presumptive evidence that the method of computation adopted therein is correct.

(5) **Order Determining Tax; Form; Notice.** Upon the determination by the county court as to the value of any estate which is taxable under . . . the inheritance tax laws and of the tax to which it is liable, notice shall be given to all persons known to be interested, including the county treasurer and the state treasurer by delivering personally or mailing to each a copy of the order of determination. Such order shall include a statement of (1) the date of the death of the decedent, (2) the net value of the real and personal property to be transferred, (3) the proportions and amounts of all such property of such decedent, (4) the names and relationship of the persons entitled to receive the same, (5) the rates and amounts of inheritance tax to which each of such amounts and proportions are liable, (6) the total amount of tax to be paid, and (7) a statement as to penalty for delay,

if any, and shall be substantially in the form to be prescribed and furnished to county courts by the attorney general. And no final judgment shall be entered in such estates until due proof is filed with the court showing that a copy of such order has been delivered or mailed to the state treasurer.

(As amended by St. 1911, c. 530.)

(6) **Guardian ad litem for infants and incompetents.** If, however, it appears at this or any stage of the proceedings that any of such parties known to be interested in the estate is an infant or an incompetent, who is not already represented by a guardian *ad litem*, the county court shall if the interest of such infant or incompetent is presently involved and is adverse to that of the other persons interested therein appoint a . . . guardian *ad litem* for . . . such infant, but nothing in this provision shall affect the right of an infant over fourteen years of age or of any one on behalf of an infant under fourteen years of age to nominate and apply for the appointment of a . . . guardian *ad litem* of such infant at any . . . stage of the proceedings.

(7) **Rehearing within sixty days upon record.** . . . The . . . attorney general or any person dissatisfied with the appraisement or assessment and determination of such tax may apply for a rehearing thereof before the county court within sixty days from the fixing, assessing, and determination of the tax by the county court as herein provided on filing a written notice which shall state the grounds of the application for a rehearing. The rehearing shall be upon the records, proceedings, and proofs had and taken on the hearings as herein provided and a new trial shall not be had or granted unless specially ordered by the county court.

(8) **Re-appraisement in circuit court within two years.** Within two years after the entry of an order or decree of the county court determining the value of an estate and assessing the tax thereon, the . . . attorney general, may, if he believes that such appraisal, assessment, or determination has been fraudulently, collusively, or erroneously made, make application to the circuit judge of the judicial circuit in which the former owner of such estate resided for a re-appraisal thereof. The circuit judge to whom such application is made may thereupon appoint a competent person to re-appraise such estate. Such appraiser shall possess the powers, be subject to the duties, shall give the notice and receive the compensation provided by sections . . . 1087-13 and . . . 1087-14. . . . Such compensation shall be payable by the county treasurer out of any funds he may have on account of any tax imposed under the provisions of this act upon the certificate of the circuit judge. . . . The report of such appraiser shall be filed in the circuit court . . . and thereafter the same proceedings shall be taken and had by and before such circuit court as herein provided to be taken and had by and before the county court. The determination and assessment of such circuit court shall supersede the determination and assessment of the county court and shall be filed . . . in the office of the state treasurer . . . and a certified copy . . . transmitted to the county court of the proper county.

**Duties of County Treasurer, County Judge and District Attorney, Where Tax is Unpaid.**

S. 1087-16. (Sec. 16, ch. 44, 1903.) (1) If the treasurer of any county shall have reason to believe that any tax is due and unpaid under this act after the

refusal or neglect of any person liable therefor to pay the same, he shall notify the district attorney of the county in writing of such failure or neglect and such district attorney if he have probable cause to believe that such tax is due and unpaid, shall apply to the county court for a citation citing the person liable to pay such tax to appear before the court on the day specified not more than three months from the date of such citation and show cause why the tax should not be paid.

**County court may issue citation, etc.** The judge of the county court upon such application and whenever it shall appear to him that any such tax, accruing under this act, has not been paid as required by law, shall issue such citation and the service of such citation and the time, manner and proof thereof and the hearing and determination thereof, shall conform as near as may be to the provisions of the laws governing probate practice of this state, and whenever it shall appear that any such tax is due and payable and the payment thereof cannot be enforced under the provisions of this act in said county court, the person or corporation from whom the same is due is hereby made liable to the county of the county court having jurisdiction over such estate or property for the amount of such tax, and it shall be the duty of the district attorney of said county in the name of such county to sue for and enforce the collection of such tax, and it is made the duty of said district attorney to appear for and act on behalf of any county treasurer, who shall be cited to appear before any county court under the provisions of this act.

**Public Administrator may Administer Estates after Sixty Days.**

S. 1087-17. (Sec. 17, ch. 44, 1903, and Sec. 10, ch. 504, 1909.) (1) Where no application for administration on the estate of any deceased person is made within sixty days after the demise of such person, and such estate appears to come under the provisions of the inheritance tax laws, the public administrator of the proper county shall make application for and shall be entitled to such general or special administration of such estate as may be necessary for the purpose of the adjustment and payment of the inheritance tax provided by law and shall administer the same as other estates are administered.

(2) **Where transfer made in contemplation of death.** Where it appears that the estate of a deceased person subject to the inheritance tax laws was transferred in contemplation of the death of the grantor without the adjustment and payment of the inheritance taxes and no application for such adjustment is made within sixty days after the demise of such grantor, the public administrator of the proper county shall make application for and shall be entitled to such general or special administration as may be necessary for the purpose of the adjustment and payment of the inheritance taxes provided by law and shall administer such estate the same as other estates are administered as though such estate had not been transferred by the grantor.

(3) **Public administrator to appear for county and state; compensation; general supervision of attorney general.** It shall be the duty of the public administrator, under the general supervision of the attorney general and with the assistance of the district attorney, when required by the attorney general or county judge, to investigate the estates of deceased persons within his county and to appear for and act in behalf of the county and state in the county court

in such estates as the court may in its discretion deem necessary, and for such services the public administrator shall be entitled to five per centum of the gross inheritance tax as determined in each such estate, to be paid by the county treasurer out of the inheritance tax funds upon an order of the county judge, provided that the minimum fee for each such estate shall not be less than three dollars and the maximum fee not more than twenty-five dollars.

(4) In counties of over 200,000, public administrator or assistant district attorney. In counties containing a population of over two hundred thousand, an assistant district attorney, compensated as otherwise provided by law, may by order of the county court be designated to take the place of and perform all the duties of the public administrator relating to the inheritance tax laws, except as provided in subdivisions 1 and 2 of this section. Whenever the assistant district attorney is designated as public administrator he shall receive the same fees as the public administrator in other counties, provided, however, that all such fees collected by him as public administrator shall be turned into the county treasury.

S. 1087-18 of the statutes was repealed. (Sec. 18, ch. 44, 1903, repealed by Sec. 11, ch. 504, 1909.)

#### **Powers of Tax Commission.**

S. 1087-18. (1) It shall be the duty of the tax commission to investigate and cause to be investigated the administration of the inheritance tax laws, and such particular estates to which the inheritance tax laws apply, throughout the various counties of the state, and to cause to be made and filed in its offices reports of such investigation together with specific information and facts as to particular estates that may seem to require especial consideration and attention by the legal department of the state.

(2) Under its general authority as set forth in section 1087-37, the commission shall appoint, and fix compensation of at a sum not exceeding three thousand dollars annually, besides expenses, as inheritance tax investigator who shall have charge of the inheritance tax work under the supervision of the tax commission, and who shall be provided with such further assistance from time to time from the regular force of the tax commission office as may be necessary and expedient. Such inheritance tax investigator shall devote his time to the work of inheritance tax investigations, and he shall personally make such investigations at the different county courts from time to time as deemed advisable. He shall file with the commission triplicate reports on the first day of January, April, July, and October each year, together with such additional triplicate reports of particular estates from time to time as seem to require the special attention of the legal department. One copy of such reports shall be filed with the commission, one copy shall be submitted to the attorney general by the commission with such recommendation thereon as it may deem advisable for the due administration of the inheritance tax laws, and one copy may in the discretion of the commission be submitted by it to the county judge or public administrator of the county reported on with such recommendation as the commission may deem wise and expedient.

(3) The commission and its inheritance tax investigator, in the conduct of inheritance tax affairs, shall have the same and similar powers and authority for gathering information and making investigations as is conferred by law on

the commission in the performance of its other duties. The commission shall biennially report to the legislature at the opening of the sessions the general result of its labors and investigations in inheritance tax matters during the previous biennial period, together with specific reports of the several counties where the administration of the inheritance tax laws has been lax and unsatisfactory, with such recommendations for action thereon by the legislature as may be deemed advisable and proper.

(4) The commission and its inheritance tax investigator shall also gather information and make investigations and reports concerning the estates of non-resident decedents within the provisions of the inheritance tax laws, and shall especially investigate the probate and other records for such probable estates without the state and report thereon from time to time to the legal department of the state and to the public administrator of the proper county court for appropriate legal action.

(5) It shall be the duty of the legal department of the state to carry out and enforce the recommendations and directions of the tax commission in all matters pertaining to the conduct of inheritance tax affairs; and in every estate in which the amount of inheritance tax collectible shall exceed or probably exceed the sum of one thousand dollars, there shall be no compounding, composition, or settlement of the taxes under the authority conferred by section 1087-21, or otherwise, until the tax commission or its inheritance tax investigator shall have investigated such estate and made a report thereon, nor until the commission consents to such compounding, compromise, or settlement.

(6) The inheritance tax investigator herein provided for shall be in the exempt class of the civil service. (Added by St. 1911, c. 450.)

S. 1087-19. Each county treasurer shall make a report under oath, to the state treasurer, on January, April, July, and October first of each year, of all taxes received by him under . . . the inheritance tax laws, stating for what estate and by whom and when paid. The form of such report may be prescribed by the state treasurer. He shall at the same time pay the state treasurer all the taxes received by him under . . . the inheritance tax laws and not previously paid into the state treasury, and for all such taxes collected by him and not paid into the state treasury, within . . . five days from the times herein required, he shall pay interest at the rate of ten per centum per annum.

(As amended by St. 1911, c. 530.)

#### **Seven and One-Half Per Cent to be Retained by County.**

S. 1087-20. (Sec. 20, ch. 44, 1903, and Sec. 12a, ch. 504, 1909.) The county treasurer shall retain for the use of the county, out of all taxes paid and accounted for by him each year under this act . . . seven and one-half per cent . . . on all sums so collected by or paid to said treasurer.

#### **Composition or Settlement of Tax in Expectant Estates.**

S. 1087-21. (Sec. 21, ch. 44, 1903, and Sec. 13, ch. 504, 1909.) The public administrator . . . with the consent of the state treasurer . . . and the attorney general, expressed in writing, is authorized to enter into an agreement with the executor, administrator, or trustee of any estate therein situate, in which remainders or expectant estates have been of such a nature or so disposed and circumstanced that the taxes therein were held not presently payable or where

the interests of the legatees or devisees are not ascertainable under the provisions of this act, and to compound such taxes upon such terms as may be deemed equitable and expedient and to grant discharges to said executors, administrators, or trustees upon the payment of the taxes provided for in such composition, provided, however, that no such composition shall be conclusive in favor of said executors, administrators, or trustees as against the interests of such *cestui que* trust as may possess either present rights of enjoyment or fixed, absolute, or indefeasible rights of future enjoyment, or of such as would possess such rights in the event of the immediate termination of particular estates, unless they consent thereto either personally when competent or by guardian. Composition or settlement made or affected under the provisions of this section shall be executed in triplicate and one copy shall be filed in the office of the state treasurer; . . . one copy in the office of the judge of the county court in which the tax was paid; and one copy to be delivered to the executors, administrators, or trustees, who shall be parties thereto.

#### **Transfer Receipts May be Recorded.**

S. 1087-22. (Sec. 22, ch. 44, 1903, and Sec. 14, ch. 504, 1909.) Any person shall, upon the payment of the sum of fifty cents, be entitled to a receipt from the county treasurer of any county, or the state treasurer, . . . or at his option to a receipt that may have been given by such county treasurer or . . . state treasurer for the payment of any tax under this act, under the official seal of such county treasurer, or state treasurer, . . . which receipt shall designate upon whose estate . . . such tax shall have been paid, by whom, and whether in full of such tax. Such receipt may be recorded in the office of the register of deeds of the county in which such estate . . . is situate in a book to be kept by him for that purpose, which shall be labeled "transfer tax."

#### **Tax how Applied; Deductions.**

S. 1087-23. (Sec. 23, ch. 44, 1903, and Sec. 15, ch. 504, 1909.) All taxes levied and collected under this act, less any expenses of collection, the percentage to be retained by the county, and the deduction authorized under this act, shall be paid into the treasury of the state for the use of the state, and shall be applicable to the expenses of the state government and to such other purposes as the legislature may by law direct.

#### **Terms Defined.**

S. 1087-24. (Sec. 24, 1903, and Sec. 16, ch. 504, 1909.) The word "estate" and "property" as used in this act shall be taken to mean the real and personal property or interest therein of the testator, intestate, grantor, bargainor, vendor, or donor passing or transferred to individual legatees, devisees, heirs, next of kin, grantees, donees, vendees, or successors, and shall include all personal property within or without the state. The word "transfer" as used in this act shall be taken to include the passing of property or any interest therein, in possession or enjoyment, present or future, by inheritance, descent, devise, succession, bequest, grant, deed, bargain sale, gift, or appointment in the manner herein prescribed. The word "decedent" as used in this act shall include the testator, intestate, grantor, bargainor, vendor, or donor. The words "county treasurer," "public administrator" "and district attorney" as used in this act

shall be taken to mean the treasurer, public administrator and district attorney of the county of the county court having jurisdiction as provided in section . . . 1087-12.

**Public Administrators; Appointment, Oath, Bond, Etc.**

S. 3818. (As amended by Sec. 17, ch. 504, 1909.) The county court of each of the counties in this state . . . shall appoint some suitable person who when hereafter appointed shall be an attorney, when available, to be known as the public administrator, who shall, before entering upon the duties of such trust, be sworn to a faithful discharge thereof and shall give bond, with sufficient sureties, to the judge of said court in a sum not less than five thousand dollars, with condition substantially like the conditions of other administrators' bonds and that he will faithfully perform his duties provided by law; which bond shall be approved by the county court and with the oath filed and recorded therein. Additional bonds may be required by the court in its discretion. The expense of surety upon such bonds shall be paid by the county treasurer out of any inheritance tax funds in his hands belonging to the state, on the order of the county judge. The term of such public administrator shall continue until terminated by the appointment of his successor by the county court at its discretion.

**Attorney General to Enforce Inheritance Tax Laws.**

S. 162. (As amended by ch. 500, 1907.) The attorney general may appoint a deputy attorney general and three assistants, to be designated respectively as first assistant attorney general, second assistant attorney general and third assistant attorney general. . . . The said appointees shall perform such duties as the attorney general may prescribe. The attorney general shall designate one of said appointees, whose special duty it shall be to attend to all matters pertaining to the enforcement of the statute in respect to the collection of the inheritance tax. . . .

**Special Administrators to Discharge Records Undischarged by Decedents, Determine Inheritance Taxes, etc.**

S. 3813a. (As amended by ch. 85, 1903, and s. 36, ch. 660, 1907.) Whenever it shall appear, by affidavit or verified petition, to the county court that an inhabitant of such county has died leaving no debts unpaid or that his estate has been fully settled and the executor or administrator thereof has been discharged, and that any mortgage or judgment in favor of such deceased person remains undischarged of record or any other act remains unperformed on the part of such person the performance of which affects or is of importance to petitioner or any other person the court may appoint a special administrator for the purpose of releasing and discharging such mortgage or judgment of record or performing such other acts as may be deemed necessary in the premises. Upon the presentation of such petition or affidavit the court shall determine whether notice of the hearing thereon shall be given, and if such notice is ordered the order shall direct the manner and time of giving the same. If the court shall deem notice of such hearing unnecessary it may proceed to hear the matter without notice. If the court shall appoint a special administrator it shall in all cases, where money or property may come into his hands, require him to give a bond to the judge of said court in such sum, with such conditions and with such surety or sureties as said court shall direct. The order appointing such administrator shall require



him to make to said court, without delay, a full report of his acts as such. Upon the filing of such report such further proceedings shall be had and such further order made in said matter by said court as it shall deem necessary. Such special administrator shall exercise no powers except those specifically granted by the order of said court. When he shall have fully performed the act or acts mentioned in the order appointing him, his powers as such shall cease. The court may at any time require the administrator to make a report of his acts as such or revoke and vacate his appointment whenever it shall deem best.

**Special administration for inheritance taxes: certificate of descent.** Such special administrator may be so appointed and such special administration may be had and a *prima facie* inventory, appraisal and heirship determination had thereunder, for the purpose of having inheritance taxes determined and paid and of having *prima facie* certificate of descent of real estate issued pursuant to section 2276a in cases where it appears the estate may come under the provisions of the inheritance tax laws and where it does not otherwise appear necessary for regular administration to be had therein.

**Computations of Life Estates, Annuities, etc.: American Table: Rate 5 Per Cent.**

S. 3871a. (Ch. 420, 1907, and ch. 38, 1909.) The present value of every estate, annuity or interest of beneficiaries for all purposes in every estate and in all courts . . . shall . . . be computed . . . in accordance with the American experience table of mortality, and interest at the rate of five per cent per annum. The commissioner of insurance shall compute the present value of the estates or interests of the several beneficiaries when the necessary statement of facts is submitted to him upon request or order of any court or judge having jurisdiction. The said statement of facts shall be submitted to said commissioner of insurance in such form as he may prescribe. Provided, however, that when it is impracticable to use the American experience table of mortality, the commissioner of insurance may use the Northampton table. . . . In all cases the sum of the present value of the several parts, estates, or interests of the several beneficiaries shall equal the net value of the entire estate. . . .

The commissioner of insurance shall cause to be printed authorized annuity tables based on the American experience table of mortality, and five per cent interest, together with instructions for their use in accordance with the foregoing provisions and shall furnish copies thereof to any judge making application therefor.

**American Experience Table and Rule for Making Simple Computations Submitted by Commissioner of Insurance pursuant to Sect. 3871a.**

Find the interest at five per cent for one year upon the sum, to the income of which the person is entitled; then multiply this interest by the present value of one dollar per year for life, as given opposite the person's age in the table. The product is the present value of the interest of such person in said sum.

Example. Suppose a widow's age is thirty-seven, and she is entitled to a life interest in real estate worth \$3,000. Five per cent interest on this amount is \$150. The present value of one dollar per year for life at age 37 is \$14.191. Therefore the present value of \$150 per year would be 150 times \$14.191 or \$2,128.65.

If the widow is entitled to a dower interest only, then one-third of the value is taken, and computation made in the same way.

To find the present value of a remainder, deduct the present value of the annuity as determined above from the net value of the estate. Thus, if the value of the estate is \$3,000 and the present value of the annuity is \$2,128.65 the remainder would be worth \$871.35.

**Present Value of an Annuity of One Dollar Per Year, for Single Life  
5 Per Cent.**

**AMERICAN EXPERIENCE TABLE.**

Age.	Present Value.	Age.	Present Value.	Age.	Present Value.
10	16.505	40	13.716	70	5.9802
11	16.461	41	13.544	71	5.6942
12	16.415	42	13.365	72	5.4129
13	16.366	43	13.179	73	5.1359
14	16.316	44	12.985	74	4.8628
15	16.263	45	12.783	75	4.5926
16	16.207	46	12.574	76	4.3248
17	16.149	47	12.357	77	4.0586
18	16.088	48	12.133	78	3.7939
19	16.024	49	11.901	79	3.5311
20	15.957	50	11.662	80	3.2702
21	15.886	51	11.416	81	3.0135
22	15.813	52	11.164	82	2.7606
23	15.736	53	10.905	83	2.5105
24	15.655	54	10.640	84	2.2607
25	15.570	55	10.370	85	2.0098
26	15.482	56	10.095	86	1.7606
27	15.389	57	9.8145	87	1.5175
28	15.292	58	9.5299	88	1.2861
29	15.191	59	9.2413	89	1.0670
30	15.084	60	8.9493	90	0.85453
31	14.973	61	8.6545	91	0.64497
32	14.857	62	8.3574	92	0.44851
33	14.735	63	8.0588	93	0.28761
34	14.608	64	7.7590	94	0.13605
35	14.475	65	7.4588	..	.....
36	14.336	66	7.1592	..	.....
37	14.191	67	6.8607	..	.....
38	14.039	68	6.5642	..	.....
39	13.881	69	6.2705	..	.....



Wherefore it is Ordered, That the.....be, and he hereby is authorized and directed to forthwith pay and deliver to the County Treasurer the sum.....Dollars as and for the Inheritance Tax to which the property of said deceased is liable in the proportions and amounts as above set forth upon the transfer and assignment of the same to the persons entitled thereto and that he take a receipt therefor, and charge the same to the shares as respectively taxed.

.....  
.....(statement as to penalty for delay, if any.)

It is further Ordered, That upon filing such receipt, the amount so paid be property credited to such.....in his accounts in the settlement and distribution of said estate.

And it is further Ordered, That notice hereof be forthwith given to all parties known to be interested, including the County Treasurer and State Treasurer, by delivering personally or mailing to each a copy of this order.

Dated.....190... By the Court,

.....  
Judge.

Note: It is important that the order of determination should be promptly served upon both the county and state treasurer, and final judgment should not be entered until proof of such service is on file.

## WYOMING.

### In General.

Wyoming adopted an inheritance tax in 1903, which was modified in 1909. Wyoming is not now collecting a tax on stock of a Wyoming corporation owned by a non-resident if the stock certificate is kept outside the state, though it apparently was doing so in 1908, and the statute contains the usual provision holding the corporation responsible for the collection of the tax.

### Constitutional Limitations.

**Wyo. Const. 1889, a. 1, s. 28.**

No tax shall be imposed without the consent of the people or their authorized representatives. All taxation shall be equal and uniform.

**Wyo. Const. 1889, a. 15, s. 11.**

All property, except as in this constitution otherwise provided, shall be uniformly assessed for taxation, and the legislature shall prescribe such regulations as shall secure a just valuation for taxation of all property, real and personal.

**Wyo. Const. 1889, a. 15, s. 13.**

No tax shall be levied, except in pursuance of law, and every law imposing a tax shall state distinctly the object of the same, to which only it shall be applied.

### List of Statutes.

1903. Statutes of Wyoming, c. 80.

1909. " " " c. 18 (amending ss. 17, 18, 19, 21, of 1903, c. 80).

1910. Compiled Statutes of Wyoming, c. 169, ss. 2455-2473.

## STATUTES.

**Wyo. St. 1903, c. 80. Approved February 21, 1903.**

**AN ACT TO TAX GIFTS, LEGACIES AND INHERITANCES** in certain cases, and to provide for the collection of the same.

S. 1. All property, real, personal and mixed, which shall pass by will or by the intestate laws of this state from any person who may die seized or possessed of the same, while a resident of this state, or if decedent was not a resident of this state at the time of his death, which property or any part thereof shall be within this state or any interest therein or income therefrom, which shall be

transferred by deed, grant, sale or gift made in contemplation of the death of the grantor or bargainor or intended to take effect, in possession or enjoyment after such death, to any person or persons or to any body politic or corporate in trust or otherwise, or by reason whereof any person or body politic or corporate shall become beneficially entitled in possession or expectation, to any property or income thereof, shall be and is subject to a tax at the rate hereinafter specified to be paid to the treasurer of the proper county for the use of the state, and all heirs, legatees and devisees, administrators, executors, and trustees shall be liable for any and all such taxes until the same shall have been paid as herein-after directed. When the beneficial interests to any property or income therefrom shall pass to or for the use of any father, mother, husband, wife, child, brother, sister, wife or widow of the son or the husband of the daughter or any child or children adopted as such in conformity with the laws of the state of Wyoming, or to any person to whom the deceased, for not less than ten years prior to death, stood in the acknowledged relation of a parent, or to any lineal descendant born in lawful wedlock, in every such case the rate of tax shall be two dollars on every hundred dollars of the clear market value of such property received by each person, and at and after the same rate for every less amount. Provided, That the sum of ten thousand dollars of any such estate shall not be subject to any such duty or taxes, and that only the amount in excess of ten thousand dollars shall be subject to the above duty or tax. In all other cases the rate shall be as follows: On each and every hundred dollars of the clear market value of all property five dollars and at the same rate for any less amount; Provided, That an estate in the above case which may be valued at a less sum than five hundred dollars shall not be subject to any such duty or tax.

S. 2. When any person shall bequeath or devise any property or interest therein or income therefrom to mother, father, husband, wife, brother, sister, the widow of the son, husband of the daughter or a lineal descendant during the life or for a term of years and remainder to the collateral heir of the descendant, or the stranger in blood or to the body politic or corporate at their decease, or on the expiration of such term, the said life estate or estates for a term of years shall not be subject to any tax and the property so passing shall be appraised immediately after the death at what was the fair market value thereof at the time of the death of the decedent in the manner hereinafter provided, and after deducting therefrom the value of said life estate, or term of years, the tax prescribed by this act on the remainder shall be immediately due and payable to the treasurer of the proper county, and, together with the interest thereon shall be and remain a lien on said property until the same is paid; Provided, That the person or persons or body politic or corporate beneficially interested in the property chargeable with said tax elect not to pay the same until they shall come into the actual possession or enjoyment of such property, then, in that case said person or persons or body politic or corporate shall give a bond to the people of the state of Wyoming, in a penalty three times the amount of the tax arising upon such estate with such sureties as the district judge may approve, conditioned for the payment of the said tax, and interest thereon, at such time or period as they or their representatives may come into the actual possession or enjoyment of said property, which bond shall be filed in the office of the county clerk of the proper county; Provided, further, That such person shall make a full, verified return of said property to said district judge, and file the same

in his office within one year from the death of the decedent, and within that period enter into such securities and renew the same each five years.

Ss. 3-20 provide for the collection of the tax.

S. 21. The provisions of the chapter shall not apply to *bona fide* residents of this state when they shall possess the relation of either husband or wife or children of the deceased, and where the valuation of the property does not exceed the sum of twenty-five thousand dollars to each such legatee.

Wyo. St. 1909, c. 18, amends Wyo. St. 1903, c. 80, ss. 18 and 19, and repeals ss. 17 and 21.

## THE PRESENT ACT.

### Compiled Statutes 1910, c. 169.

S. 2455. **Property subject to.** All property, real, personal and mixed, which shall pass by will or by the intestate laws of this state from any person who may die seized or possessed of the same, while a resident of this state, or if decedent was not a resident of this state at the time of his death, which property or any part thereof shall be within this state or any interest therein or income therefrom, which shall be transferred by deed, grant, sale or gift made in contemplation of the death of the grantor or bargainor or intended to take effect, in possession or enjoyment after such death, to any person or persons or to any body politic or corporate in trust or otherwise, or by reason whereof any person or body politic or corporate shall become beneficially entitled in possession or expectation, to any property or income thereof, shall be and is subject to a tax at the rate hereinafter specified to be paid to the treasurer of the proper county for the use of the state, and all heirs, legatees and devisees, administrators, executors and trustees shall be liable for any and all such taxes until the same shall have been paid as hereinafter directed. When the beneficial interests to any property or income therefrom shall pass to or for the use of any father, mother, husband, wife, child, brother, sister, wife or widow of the son or the husband of the daughter or any child or children adopted as such in conformity with the laws of the state of Wyoming, or to any person to whom the deceased, for not less than ten years prior to death, stood in the acknowledged relation of a parent, or to any lineal descendant born in lawful wedlock, in every such case the rate of tax shall be two dollars on every hundred dollars of the clear market value of such property received by each person, and at and after the same rate for every less amount; Provided, That the sum of ten thousand dollars of any such estate shall not be subject to any such duty or taxes, and that only the amount in excess of ten thousand dollars shall be subject to the above duty or tax. In all other cases the rate shall be as follows: On each and every hundred dollars of the clear market value of all property five dollars and at the same rate for any less amount; Provided, That an estate in the above case which may be valued at a less sum than five hundred dollars shall not be subject to any such duty or tax. [L. 1903, c. 80, s. 1.]

S. 2456. **Life estate. — Not taxable.** When any person shall bequeath or devise any property or interest therein or income therefrom to mother, father, husband, wife, brother, sister, the widow of the son, husband of the daughter, or a lineal descendant during the life or for a term of years and remainder to the collateral heir of the descendant, or the stranger in blood or to the body politic

or corporate at their decease, or on the expiration of such term the said life estate or estates for a term of years shall not be subject to any tax and the property so passing shall be appraised immediately after the death at what was the fair market value thereof at the time of the death of the decedent in the manner hereinafter provided, and after deducting therefrom the value of said life estate, or term of years, the tax prescribed by this chapter on the remainder shall be immediately due and payable to the treasurer of the proper county, and, together with the interest thereon shall be and remain a lien on said property until the same is paid: Provided, That the person or persons or body politic or corporate beneficially interested in the property chargeable with said tax elect not to pay the same until they shall come into the actual possession or enjoyment of such property, then, in that case said person or persons or body politic or corporate shall give a bond to the people of the state of Wyoming, in a penalty three times the amount of the tax arising upon such estate with such sureties as the district judge may approve, conditioned for the payment of the said tax, and interest thereon, at such time or period as they or their representatives may come into the actual possession or enjoyment of said property, which bond shall be filed in the office of the county clerk of the proper county; Provided, further, That such person shall make a full, verified return of said property to said district judge, and file the same in his office within one year from the death of the decedent, and within that period enter into such securities and renew the same each five years. [L. 1903, c. 80, s. 2.]

**S. 2457. Tax payable. — When.** All taxes imposed by this chapter, unless otherwise herein provided for, shall be due and payable at the death of the decedent, and interest at the rate of six per cent per annum shall be charged and collected thereon for such time as said taxes are not paid; Provided, That if said tax is paid within six months from the accruing thereof, interest shall not be charged or collected thereon, but a discount of five per cent shall be allowed and deducted from said tax, and in all cases where the executors, administrators or trustees do not pay such tax within one year from the death of the decedent, they shall be required to give a bond in the form and to the effect prescribed in s. 2456 for the payment of said tax, together with interest. [L. 1903, c. 80, s. 3.]

**S. 2458. Duty of person administering estate.** Any administrator, executor or trustee having any charge or trust in legacies or property for distribution subject to the said tax shall deduct the tax therefrom, or if the legacy or property be not money he shall collect the tax thereon upon the appraised value thereof from the legatee or person entitled to such property, and he shall not deliver or be compelled to deliver any specific legacy or property subject to tax to any person until he shall have collected the tax thereon, and whenever any such legacy shall be charged upon or payable out of real estate, the executor, administrator or trustee, before paying the same shall deduct said tax therefrom and pay the same to the county treasurer for the use of the state, and the same shall remain a charge on such real estate until paid, and the payment thereof shall be enforced by the executor, administrator or trustee in the same manner that the said payment of said legacies might be enforced; if, however, such legacy be given in money to any person for a limited period, he shall retain the tax upon the whole amount, but if it be not in money, he shall make application to the court having jurisdiction of his accounts to make an apportion-



ment if the case requires it of the sum to be paid into his hands by such legatees, and for such further order relative thereto as the case may require. [L. 1903, c. 80, s. 4.]

**S. 2459. Sale of property to pay tax.** All executors, administrators, and trustees shall have full power to sell so much of the property of the decedent as will enable them to pay said tax, in the same manner as they may be enabled to do by law, for the payment of debts for their testators and intestates, and the amount of said tax shall be paid as hereinafter directed. [L. 1903, c. 80, s. 5.]

**S. 2460. Tax payable to treasurer — Receipt for.** Every sum of money retained by any executor, administrator or trustee, or paid into his hands for any tax on any property, shall be paid by him within thirty days thereafter to the treasurer of the proper county, and the said treasurer, or treasurers shall give, and every executor, administrator or trustee shall take, duplicate receipts from him of said payments, one of which receipts he shall immediately send to the state treasurer, whose duty it shall be to charge the treasurer so receiving the tax with the amount thereof, and shall seal said receipt with the seal of his office and countersign the same and return it to the executor, administrator or trustee, whereupon it shall be a proper voucher in the settlement of his accounts, but the executor, administrator or trustee shall not be entitled to credit in his accounts or be discharged from liability for such tax unless he shall produce a receipt so sealed and countersigned by the treasurer and a copy thereof certified by him. [L. 1903, c. 80, s. 6.]

[Affected by amendment in 1909. See ss. 2471-2473.]

**S. 2461. Duty of administrator regarding realty.** Whenever any of the real estate of which any decedent may die seized shall pass to any body politic or corporate, or to any person or persons, or in trust for them, or some of them, it shall be the duty of the executor, administrator or trustee of such decedent to give information thereof in writing to the treasurer of the county where said real estate is situated, within six months after they undertake the execution of their duties, or if the fact be not known to them within that period, then within one month after the same shall have come to their knowledge. [L. 1903, c. 80, s. 7.]

**S. 2462. Refunding tax in case of debts.** Whenever debts shall be proved against the estate of the decedent after distribution of legacies from which the inheritance tax has been deducted in compliance with this chapter, and the legatee is required to refund any portion of the legacy, a due proportion of the said tax shall be repaid to him by the executor or administrator, if the said tax has not been paid into the state or county treasury, or by the county treasurer if it has been so paid. [L. 1903, c. 80, s. 8.]

**S. 2463. Transfer of stocks.** Whenever any foreign executor or administrator shall assign or transfer any stocks or loans in this state standing in the name of decedent, or in trust for decedent, which shall be liable to the said tax, such tax shall be paid to the treasury or treasurer of the proper county on the transfer thereof; otherwise the corporation making such transfer shall become liable to pay such taxes. [L. 1903, c. 80, s. 9.]

**S. 2464. Refunding tax erroneously paid.** When any amount of said tax shall have been paid erroneously to the state treasurer it shall be lawful

for him on satisfactory proof rendered to him by said county treasurer of said erroneous payments to refund and pay to the executor, administrator or trustee, person or persons, who may have paid any such tax in error, the amount of such tax so paid; Provided, That all applications for the repayment of said tax shall be made within two years from the date of said payment. [L. 1903, c. 80, s. 10.]

**S. 2465. Appraisement of property.** In order to fix the value of property of persons whose estate shall be subject to the payment of said tax, the district judge, on the application of any persons interested in the estate, including the state, or upon his own motion, shall appoint some competent person as appraiser as often as, or whenever occasion may require, whose duty it shall be forthwith to give notice by mail to all persons known to have or claim an interest in such property, and to such persons as the district judge may by order direct, of the time and place at which he will appraise such property, and at such time and place to appraise the same at a fair market value, and for that purpose the appraiser is authorized by leave of the district judge to use subpoenas for and to compel the attendance of witnesses before him, and to take the evidence of such witnesses under oath concerning such property and the value thereof, and he shall make a report thereof and of such value in writing to the district court with the depositions of the witnesses examined and such other facts in relation thereto as the district court may by order require to be filed in the office of the clerk of said district court, and from this report the said district court shall forthwith make an order and fix the then cash value of all estate, annuities and life estates or terms of years growing out of said estate, and the tax to which the same is liable, and shall immediately give notice by mail to all parties known to be interested therein. Any person or persons dissatisfied with the appraisement or assessment may appeal therefrom to the district court of the proper county within sixty days after the making and filing of such appraisement or assessment, on giving good and sufficient security to the satisfaction of the district judge to pay all costs together with whatever taxes that shall be fixed by the district court. The said appraiser shall be paid by the county treasurer out of any funds he may have in his hands on account of said tax, on the certificate of the district judge at the rate of three dollars per day for every day actually and necessarily employed in said appraisement together with his actual, and necessary traveling expenses, and the witnesses subpoenaed by said appraiser shall be paid such fees as now provided by law. [L. 1903, c. 80, s. 11.]

**S. 2466. Penalty for misfeasance of appraiser.** Any appraiser appointed by this chapter who shall take any fees or reward from any executor, administrator, trustee, legatee, next of kin or heir of any decedent, or from any other person liable to pay said tax, or any portion thereof, shall be guilty of a misdemeanor, and upon conviction in any court having jurisdiction of misdemeanor he shall be fined not less than two hundred and fifty dollars, nor more than five hundred dollars, and imprisoned not exceeding ninety days, and in addition thereto the district judge shall dismiss him from such service. [L. 1903, c. 80, s. 12.]

**S. 2467. Court having jurisdiction of realty.** The district court in the county in which the real property is situated, of the decedent who was not a resident of the state, or in the county of which the deceased was a resident at the time of his death, shall have jurisdiction to hear and determine all questions in relation to the tax arising under the provisions of this chapter, and the dis-

strict court first acquiring jurisdiction hereunder shall retain the same to the exclusion of every other. [L. 1903, c. 80, s. 13.]

**S. 2468. Duty of court when tax is not paid.** If it shall appear to the district court that any tax accruing under this chapter has not been paid according to law, it shall issue a summons summoning the persons interested in the property liable to the tax to appear before the court on a day certain not more than three months after the date of such summons, to show cause why said tax should not be paid. The process, practice and pleadings and the hearing and determination thereof, and the judgment in said court in such cases, shall be the same as those now provided or which may hereafter be provided in probate cases in the district courts in this state, and the fees and costs in such case shall be the same as in probate cases in the district courts of this state. [L. 1903, c. 80, s. 14.]

**S. 2469. Duty of treasurer when tax is not paid.** Whenever the treasurer of any county shall have reason to believe that any tax is due and unpaid under this chapter, after the refusal or neglect of the persons interested in the property liable to pay said tax to pay the same, he shall notify the county attorney of the proper county, in writing, of such refusal to pay said tax, and the county attorney so notified, if he has proper cause to believe a tax is due and unpaid, shall prosecute the proceeding in the district court in the proper county, as provided in s. 2468 for the enforcement and collection of such tax, and in such case said court shall allow as costs in the said case such fees to said attorney as it may deem reasonable. [L. 1903, c. 80, s. 15.]

**S. 2470. Duty clerk of court.** The clerk of the district court of each county shall every three months make a statement in writing to the county treasurer of the county of the property from which, or the party from whom he has reason to believe a tax under this chapter is due and unpaid. [L. 1903, c. 80, s. 16.]

**S. 2471. Records to be kept.** The county commissioners of each county shall furnish to each county clerk a book in which he shall enter the returns made by appraisers for cash value of annuities, life estates and terms of years and other property fixed by the district court in his county and the tax assessed thereon, and the amounts of any receipts for payment thereof filed with him, which book shall be kept in the office of the county clerk as a public record. [L. 1903, c. 80, s. 18; L. 1909, c. 18, s. 2.]

**S. 2472. Treasurer to county to retain.** The county treasurer of each county shall keep all money collected under the provisions of this chapter in a separate and special fund to be expended under the direction of the county commissioners of each county, for the sole purpose of the permanent improvement of the county road, such road shall not be built within the corporate limits of any city or village, but may begin at the limit of any city or village and extending therefrom in the direction most traveled by the public; to be determined upon by the said county commissioners; Provided, That such improvements may be made from the limit of any city of the metropolitan or first class and through a city of the second class or village, where the road so determined upon to be improved is a main road between the county and such city of the metropolitan or first class. All contracts for such permanent improvements shall be let by the said board, by competitive bids after the plans and specifications therefor drawn

by the county surveyor or engineer have been filed with the county clerk of each respective county. All bids for the construction of such roads shall be deposited with the county clerk of the respective counties and opened by him in the presence of the county commissioners, then filed with the county clerk. All such permanent roadbeds shall not be less than twelve feet, nor more than sixteen feet in width and shall be constructed of the most durable and approved material and the remaining part of said road shall be constructed at one side of the said permanent part and be used as a dirt road; Provided, That it shall be lawful for the county commissioners of any county having a population of not more than thirty thousand, to use said fund in the manner herein provided for the improvement of any grade, bridge, cut, fill, or dirt road leading into any city or village within said county; Provided, That all money hereafter paid by the various county treasurers to the state treasurer, under the provisions of this chapter shall be, upon proper vouchers signed by the county clerk and county treasurer, paid back to the said county from which said tax was received and said money when so refunded by the state treasurer shall be placed in the special fund heretofore mentioned in each county and shall be expended in like manner and for like purposes as herein above specified. [L. 1903, c. 80, s. 19; L. 1909, c. 18, s. 3.]

**S. 2473. Duplicate receipts.** Any person or body politic or corporate shall, upon the payment of the sum of fifty cents, be entitled to a receipt from the county treasurer of any county or the copy of the receipt at his option, that may have been given by said treasurer for the payment of any tax under this chapter, to be sealed with the seal of his office, which receipt shall designate on what real property, if any, of which any deceased may have died seized, said tax has been paid and by whom paid, and whether or not it is in full of said tax, and said receipt may be recorded in the clerk's office of said county in which the property may be situated in the book to be kept by said clerk for such purpose. The lien of the inheritance tax provided herein shall continue until the said tax is settled and satisfied; Provided, That said lien shall be limited to the property chargeable therewith; and Provided further, That all inheritance taxes shall be sued for within five years after they are due and legally demandable; otherwise they shall be presumed to have been paid, and such lien shall be removed. [L. 1903, c. 80, s. 20.]

## UNITED STATES.

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### In General.

The financial necessities of two wars caused the enactment by our federal government of legacy taxes and the decisions of our highest court on these statutes served to entrench firmly the central government in this powerful means of obtaining revenue. The act of 1898 was attacked on the fundamental ground that congress had no authority to levy such a tax in the states, but it was sustained, and its progressive features were also approved. There is no federal inheritance tax at present.

### List of Statutes.

- 1797. 1 U. S. St. 527.
- 1797. 1 U. S. St. 536.
- 1802. 2 U. S. St. 148.
- 1862. 12 U. S. St. 483.
- 1862. 12 U. S. St. 485.
- 1864. 13 U. S. St. 285.
- 1864. 13 U. S. St. 287.
- 1864. 13 U. S. St. 288.
- 1864. 13 U. S. St. 289.
- 1864. 13 U. S. St. 299.
- 1864. 13 U. S. St. 300.
- 1864. 13 U. S. St. 303.
- 1865. 13 U. S. St. 481.
- 1865. 13 U. S. St. 140.
- 1866. 13 U. S. St. 141.
- 1867. 14 U. S. St. 475.
- 1870. 16 U. S. St. 261.
- 1872. 17 U. S. St. 256.
- 1872. 17 U. S. St. 402.
- 1894. 28 U. S. St. 509, c. 349.
- 1898. 30 U. S. St. 448.
- 1898. 30 U. S. St. 464.
- 1901. 31 U. S. St. 946.
- 1901. 31 U. S. St. 948.
- 1902. 32 U. S. St. 97.
- 1902. 32 U. S. St. 406.
- 1857-1869. Brightly's Digest, a. 13, p. 366, s. 306.
- 1873-1874. Revised Statutes of the U. S., c. 10, p. 679, ss. 3438-3439.
- 1892-1899. Revised Statutes of the U. S., p. 679, ss. 3438-3440.

1892-1899. Supplement to Revised Statutes of the U. S., v. 2, pp. 798-799.

1901. United States Compiled Statutes, t. 35, c. 11a, ss. 8, 30, 9, 10, 11, pp. 279-282.

1901. United States Compiled Statutes, c. 10, ss. 3438-3440, c. 11a, ss. 29-31, pp. 2307-2308.

1905. Supplement to United States Compiled Statutes, 1901, pp. 447-451.

1906. Commission to Revise and Codify Laws of the U. S., v. 1, s. 4601.

1907. Supplement to Revised Statutes, 1901, pp. 649-652.

1909. " " " " 1901, pp. 876-879.

### History of Legislation.

The court traces the history of the European legislation in *Knowlton v. Moore*, 178 U. S. 41, 48, 49, 20 S. Ct. 747, 44 L. Ed. 969.

Congress imposed a legacy tax in 1797, by the act of July 6, 1797, c. 11, 1 Stat. 527, which act was repealed June 30, 1802, 2 Stat. 148, c. 17. In this statute, as in the English legacy duty statute of 1780, the mode of collection provided was by stamp duties laid on the receipts evidencing the payment of the legacies or distributive shares in personal property, and the amount was, like the English legacy tax, charged upon the legacies and not upon the residue of the personal estate.

A legacy tax was again enacted by the statute of 1862, 12 Stat. 433, 485, sections 111 and 112 of chapter 119.

This statute, like the act of 1797, was a tax imposed on legacies or distributive shares of personal property, but contained a new form of death duty. By section 194 a probate duty, proportioned to the amount of the estate and to be paid by way of stamps, was levied. The result of the act of 1862 was to cause the death duties imposed by congress to greatly resemble those then existing in England; that is, first, a legacy tax, chargeable against each legacy or distributive share, and a probate duty chargeable against the mass of the estate. Thus it came to pass that the system of death duties prevailing in England and that adopted by congress were substantially identical, and of a threefold nature, that is, a probate duty charged upon the whole estate, a legacy duty charged upon each legacy or distributive share of personalty, and a succession duty charged against each interest in real property. The fact that the framers had in mind the English law was conclusively demonstrated by section 127, wherein the succession or real estate inheritance tax was defined in substantially similar terms to that contained in the English Succession Duty Act. The parallel was observed by this court in *Sholey v. Rew*, 23 Wall. 331, 349. *Knowlton v. Moore*, 178 U. S. 41, 50, 20 S. Ct. 747, 44 L. Ed. 969.

The court after considering ancient and modern death duties concludes as follows: "Although different modes of assessing such duties prevail, and although they have different accidental names, such as probate duties, stamp duties, taxes on the transaction, or the act of passing of an estate or a succession, legacy taxes, estate taxes or privilege taxes, nevertheless tax laws of this nature in all countries rest in their essence upon the principle that death is the generating source from which the particular taxing power takes its being and that it is the power to transmit, or the transmission from the dead to the living, on which such taxes are more immediately rested." *Knowlton v. Moore*, 178 U. S. 41, 56, 20 S. Ct. 747, 44 L. Ed. 969.

### Early Probate Fees.

1 U. S. St. 527 (July 6, 1797, c. 11) imposes a stamp duty on "any receipt or other discharge for or on account of any legacy left by any will or other testamentary instrument, or for any share or part of a personal estate divided by force of any statute of distributions, the amount whereof shall be above the value of \$50, and shall not exceed the value of \$100, twenty-five cents; where the amount thereof shall exceed the value of \$100 and shall not exceed \$500, fifty cents; and for every further sum of \$500, the additional sum of one dollar."

The statute further provided an exemption on legacies or distributive shares to the wife, children or grandchildren of the deceased person and provided in section 6 that every receipt for a legacy or distributive share should express the true sum received under penalty.

1 U. S. St. 536 (Statute of December 15, 1797) postpones the commencement of the stamp duties of the act of July 6, 1797, until after June 30, 1798.

2 U. S. St. 148 (April 6, 1802) repeals the stamp duties of the act of 1797, repeal to take effect July 1, 1802.

12 U. S. St. 483 (Revenue Act July 1, 1862) Schedule B, Stamp duties) provides a duty for probate or administration where the estate does not exceed \$2,500, fifty cents; \$2,500 to \$5000, one dollar; \$5000 to \$20,000, two dollars; \$20,000 to \$50,000, five dollars; \$50,000 to \$100,000, ten dollars; \$100,000 to \$150,000, twenty dollars; every additional \$50,000 or fractional part thereof ten dollars.

13 U. S. St. p. 300 (Statute of June 30, 1864), provided a stamp duty on probate or administration where an estate does not exceed \$2,000, one dollar; on estates exceeding \$2,000 for every additional thousand dollars or fractional part thereof in excess of \$2,000, fifty cents.

14 U. S. St. 475 (Statute of March 2, 1867, s. 9) amends statute of June 30, 1864, by exempting from the stamp tax any estate which does not exceed in value one thousand dollars.

17 U. S. St. 256 (Statute of June 6, 1872, c. 315, s. 36) repealed the stamp duties under Schedule B of the statute of June 30, 1864, and acts amendatory thereof, excepting only the tax of two cents on bank checks, drafts or orders. This covered the probate and administration tax and went into effect October 1, 1872.

## THE ACT OF 1862.

## 12 U. S. St. 485, s. 111.

And be it further enacted, That any person or persons having in charge or trust, as administrators, executors, or trustees of any legacies or distributive shares arising from personal property, of any kind whatsoever, where the whole amount of such personal property, as aforesaid, shall exceed the sum of one thousand dollars in actual value, passing from any person who may die after the passage of this act possessed of such property, either by will or by the intestate laws of any state or territory, or any part of such property or interest therein, transferred by deed, grant, bargain, sale, or gift, made or intended to take effect in possession or enjoyment after the death of the grantor, or bargainor, to any person or persons, or to any body or bodies politic or corporate, in trust or otherwise, shall be, and hereby are, made subject to a duty or tax, to be paid to the United States, as follows, that is to say: —

*First.* Where the person or persons entitled to any beneficial interest in such property shall be the lineal issue or lineal ancestor, brother or sister, to the person who died possessed of such property, as aforesaid, at and after the rate of seventy-five cents for each and every hundred dollars of the clear value of such interest in such property.

*Second.* Where the person or persons entitled to any beneficial interest in such property shall be a descendant of a brother or sister of the person who died possessed, as aforesaid, at and after the rate of one dollar and fifty cents for each and every hundred dollars of the clear value of such interest.

*Third.* Where the person or persons entitled to any beneficial interest in such property shall be a brother or sister of the father or mother, or a descendant of a brother or sister of the father or mother of the person who died possessed, as aforesaid, at and after the rate of three dollars for each and every hundred dollars of the clear value of such interest.

*Fourth.* Where the person or persons entitled to any beneficial interest in such property shall be a brother or sister of the grandfather or grandmother, or a descendant of the brother or sister of the grandfather or grandmother of the person who died possessed, as aforesaid, at and after the rate of four dollars for each and every hundred dollars of the clear value of such interest.

*Fifth.* Where the person or persons entitled to any beneficial interest in such property shall be in any other degree of collateral consanguinity than is hereinbefore stated, or shall be a stranger in blood to the person who died possessed, as aforesaid, or shall be a body politic or corporate, at and after the rate of five dollars for each and every hundred dollars of the clear value of such interest: Provided, That all legacies or property passing by will, or by the laws of any state or territory, to husband or wife of the person who died possessed, as aforesaid, shall be exempt from tax or duty.

[See notes to the Act of 1864, *post*, p. 1255.]

**"Arising from Personal Property" Does not Include a Legacy Payable out of Real Estate.**

The testator made certain pecuniary legacies to be paid out of the proceeds of certain lands which she directed her executors



to sell. It was claimed that these legacies are chargeable with a duty under the United States statute of 1862, section 111 (12 Stat. 489), as "arising from personal property." The court says that the statute is "too clear and explicit to include this case, which is a legacy arising from real estate." *United States v. Watts*, 1 Bond, 580, Fed. Cas. 16, 653.

### Executor Liable.

In a suit by the United States against a beneficiary under a trust to recover the interest on an unpaid legacy, the court holds that the statute of 1862, sections 111 and 112, imposed a tax only on an executor or trustee and not on the legatee or *cestui que* trust. The executor is made subject to the tax and is to pay the tax and not the legatee. *United States v. Allen*, 9 Ben. 154, Fed. Cas. 14, 430.

### THE ACT OF 1864.

13 U. S. St. 285, s. 124 (Statute of June 30, 1864).

S. 124. **Transfers taxable. — Rates.** And be it further enacted, That any person or persons having in charge or trust, as administrators, executors, or trustees, any legacies or distributive shares arising from personal property, where the whole amount of such personal property, as aforesaid, shall exceed the sum of one thousand dollars in actual value, passing, after the passage of this act, from any person possessed of such property, either by will or by the intestate laws of any state or territory, or any personal property or interest therein, transferred by deed, grant, bargain, sale, or gift, made or intended to take effect in possession or enjoyment after the death of the grantor or bargainor, to any person or persons, or to any body or bodies politic or corporate, in trust or otherwise, shall be, and hereby are, made subject to a duty or tax, to be paid to the United States, as follows, that is to say: —

*First.* Where the person or persons entitled to any beneficial interest in such property shall be the lineal issue or lineal ancestor, brother or sister, to the person who died possessed of such property, as aforesaid, at the rate of one dollar for each and every hundred dollars of the clear value of such interest in such property.

*Second.* Where the person or persons entitled to any beneficial interest in such property shall be a descendant of a brother or sister of the person who died possessed, as aforesaid, at the rate of two dollars for each and every hundred dollars of the clear value of such interest.

*Third.* Where the person or persons entitled to any beneficial interest in such property shall be a brother or sister of the father or mother, or a descendant of a brother or sister of the father or mother, of the person who died possessed as aforesaid, at the rate of four dollars for each and every hundred dollars of the clear value of such interest.

*Fourth.* Where the person or persons entitled to any beneficial interest in such property shall be a brother or sister of the grandfather or grandmother, or a

descendant of the brother or sister of the grandfather or grandmother, of the person who died possessed as aforesaid, at the rate of five dollars for each and every hundred dollars of the clear value of such interest.

*Fifth.* Where the person or persons entitled to any beneficial interest in such property shall be in any other degree of collateral consanguinity than is hereinbefore stated, or shall be a stranger in blood to the person who died possessed, as aforesaid, or shall be a body politic or corporate at the rate of six dollars for each and every hundred dollars of the clear value of such interest: *Provided*, That all legacies or property passing by will, or by the laws of any state or territory, to husband or wife of the person who died possessed, as aforesaid, shall be exempt from tax or duty.

### **Constitutional.**

The succession tax under U. S. St. 1864, June 30, and 1866, July 13, was constitutional as an impost or excise. *Scholey v. Rew*, 90 U. S. (23 Wall.) 331.

### **History. — A Legacy Tax.**

This act was modeled upon the English statutes which have been held to be legacy taxes. *Knowlton v. Moore*, 178 U. S. 41, 69, 20 S. Ct. 747, 44 L. Ed. 969.

### **An Excise Tax.**

This is not a direct tax, but instead of that is plainly an excise tax authorized by the United States Constitution, section 8, article 1. The succession or devolution of real estate is the subject-matter of the tax or duty.

"Successor is employed in the act as the correlative to predecessor, and the succession or devolution of the real estate is the subject-matter of the tax or duty, or, in other words, it is the right to become the successor of real estate upon the death of the predecessor, whether the devolution or disposition of the same is effected by will, deed, or laws of descent, from a grantor, testator, ancestor, or other person from whom the interest of the successor has been or shall be derived; nor is the question affected in the least by the fact that the tax or duty is made a lien upon the land, as the lien is merely an appropriate regulation to secure the collection of the exaction." *Per* Clifford, J., in *Scholey v. Rew*, 90 U. S. (23 Wall.) 331, 347.

### **Trust for Grantor.**

Where the testator in 1864 had transferred property to trustees by deed in trust to collect the interest and pay it to himself, and his

wife until the death of the survivor, the court holds that the grantor did not "die possessed of" the property within the meaning of the statute of 1864 when he died in 1866, and therefore no inheritance tax could be collected. *United States v. Leverich*, 9 Fed. 586.

### **Advances.**

The United States statute of 1864 covers an advance made by a father to his son, as it is a gift made without valuable or adequate consideration. The fact that the son was named in his father's will does not give him any vested or contingent estate, but is a bare possibility not assignable, and can therefore not be made the basis for a consideration. *United States v. Banks*, 17 Fed. 322.

### **Not Applicable to Aliens.**

This statute clearly applies only to the estates of those persons whose domicile at the time of their death is within the United States. Therefore, where the testatrix was at the time of her death in 1869 a citizen of and residing in France, and gave American securities to her son, also a resident of France, no inheritance tax can be collected. *United States v. Hunnewell*, 13 Fed. 617.

Where the testator abandoned his residence in this country and moved to Europe, where he died, his will is not subject to the statute of 1864. *United States v. Morris*, 27 Fed. 341.

### **Consideration. — Assistance.**

A deed by a mother to her sons conveying to them a tract of land "in consideration of love and affection and in further consideration of the assistance they have rendered me since the death of my husband," the court remarks that the succession tax cannot be defeated by reciting a nominal consideration which would be deemed valuable in the technical sense of that term. But the court says that in the absence of further evidence the deed does show consideration sufficient to defeat the operation of the internal revenue act of June 30, 1864. *United States v. Hart*, 4 Fed. 292.

### **Devise in Accordance with Contract.**

The husband bought and paid for a house and lot which he had conveyed to his wife on the understanding that she should make her will devising the property to him in case she died before he died. Pursuant to this understanding she made her will and died

February 20, 1866, and the court holds that the inheritance tax should be assessed on her estate. The legal title to the property and the ownership were in her when she died. "The fact that the will was made on account of an agreement to that effect by the wife when she took her title, rendered it none the less an instrument creating a beneficial interest in the husband on her death, and that, under the statute, is the succession to be taxed. *Ransom v. United States*, Fed. Cas. 11, 574.

### **Charged on Each Legacy.**

The United States inheritance tax of 1864 should be charged to a specific legatee and in case the executor finds it difficult to deduct the same out of such a legacy the law would doubtless afford an adequate remedy.

U. S. St. 1862 (12 U. S. St. at Large, c. 119, s. 112) was superseded by U. S. St. June 30, 1864, which omitted from the statute of 1862 the words "to be allowed for such payment by the person or persons entitled to the beneficial interest in respect of which such tax or duty was paid." The statute of 1866 provides that any tax paid "shall be deducted from the particular legacy or distributive share on account of which the same is charged."

Under the statute of 1864, notwithstanding the omission of the language above quoted, the duties paid in respect of any particular legacies are as between the executors and the legatees in the settlement of the estate, to be deducted from the legacies in respect of which they have been paid, or charged to the legatees respectively who are entitled to such legacies, and the amendment of 1866 was simply declaratory to avoid any doubt. *Goddard v. Goddard*, 9 R. I. 293, 297.

### **Legatee not Personally Liable.**

U. S. St. 1864 cancels that of 1862 and created no personal liability on the part of the legatee. *United States v. Pennsylvania Co.*, 27 Fed. 539.

### **Liability Confined to One in Possession.**

Under the United States statute of 1864 suit can only be brought against the individual in possession. *United States v. Truck*, 27 Fed. 541. *United States v. Kelley*, 27 Fed. 542.

### **Payable from Income of Life Tenant.**

Succession duties under the United States inheritance tax of 1864 on life tenants fall on the income of the fund even where the

property is left by will in trust "to receive and collect the income and after deducting all needful and proper costs, charges and expenses, to pay the residue of said income" to the *cestui* for life.

The court holds that the costs, charges and expenses spoken of by the will which was drafted before the passage of the inheritance tax are such as are incidental to the management of the trust property, and the receipt, collection and disbursement of the income cannot in any sense include the payment of the tax by law imposed upon the life tenants and beneficial interests in the property. *Sohier v. Eldredge*, 103 Mass. 345.

### **Cestui and not Trustee is Liable.**

Under the United States statute of 1864 a person liable to pay a tax on a succession for the "successor" is the party beneficially interested in real estate and not the executor or trustee in whom the title may rest. The tax is payable by the successor himself and not by his trustee if he have one. *United States v. Tappan*, 10 Ben. 284, Fed. Cas. 16, 431.

### **Remainders.**

Under United States statute of 1862 and statute of 1864 the executive officers treated vested interests although unaccompanied with the right of immediate possession or enjoyment as at once taxable. This construction was in effect repudiated by United States statute of July 13, 1866, and was treated as unsound by the reasoning of the opinion in *Clapp v. Mason*, 94 U. S. 589. *Vanderbilt v. Eidman*, 196 U. S. 480, 25 S. Ct. 331, 49 L. Ed. 563.

### **Sum Paid in Compromise.**

The testator died in 1869 leaving a will providing among other things a fund for a school, and the sole heir attacked this provision on the ground that it was invalid under Virginia statutes. A settlement of fifty thousand dollars was made with him in consideration of his assigning to the school all his rights for the benefit of the same parties and upon the same trusts mentioned in the will.

The court holds that this was neither "a distributive share in an intestate's estate," nor "a legacy"; that the sum of fifty thousand dollars was paid as a compromise; that the heir never claimed a legacy, but insisted that the will was void and that he was entitled to the whole as heir and that as there was no such legacy the tax on the fifty thousand dollars was not a tax on a legacy and was

therefore illegally imposed. *Page v. Rives*, Fed. Cas. 10, 666, 1 Hughes 297.

#### **Lien. — Collection.**

13 U. S. St. 285 (Statute of June 30, 1864), s. 125, covers the lien of the tax and makes various administrative provisions for its assessment and collection.

#### **No Personal Liability.**

One who buys land subject to the lien of the United States inheritance tax of 1864 incurs no personal liability on account of the tax. The lien can be enforced against the land, but no personal judgment can be rendered against him therefor. One can be made personally liable for the United States inheritance tax only to the extent of his interest in the estate. *Wilhelmi v. Wade*, 65 Mo. 39.

#### **Penalties.**

U. S. St. 1864, c. 173, s. 14, prescribes a penalty of fifty per cent for refusal or neglect to make a list or return; but this refers to the annual and monthly lists and returns to be made by parties taxable. But the penalty for failure to return and give notice of a succession tax is provided for in section 148, which provides a penalty of ten per cent. *Wright v. Blakeslee*, 101 U. S. 174, 178, 25 L. Ed. 1048, Fed. Cas. 18073, 13 Blat. 421.

#### **Real Estate.**

13 U. S. St. 285 (Statute of June 30, 1864), ss. 126–132, carefully define successions in real estate subject to tax.

#### **Effect of Partition.**

The succession tax is not a tax upon land. The fact that partition proceedings were held, under which the plaintiff's equitable interest in certain real estate was satisfied by an assignment to him of personal property, does not relieve him from the payment of a succession tax on his share of the estate for the obvious reason that he received the full value of the real estate in other property assigned to him belonging to the same estate. *Scholey v. Rew*, 90 U. S. (23 Wall.) 331, 349.

#### **Retroactive on Remainders.**

The testatrix died in 1847, leaving her property to her husband for life, and on his death to his children. The husband died August 10, 1866, and the tax was assessed upon one of his chil-

dren taking on his death. This life interest to the child on the death of the father is subject to the inheritance tax under the U. S. St. 1864, June 30, as it is a "devolution" under that statute. *Blake v. McCartney*, 4 Cliff 101, Fed. Cas. No. 1498.

13 U. S. St. 285 (Statute of June 30, 1864), s. 133.

And be it further enacted, That there shall be levied and paid to the United States in respect of every such succession as aforesaid, according to the value thereof, the following duties, that is to say:—

Where the successor shall be the lineal issue or lineal ancestor of the predecessor, a duty at the rate of one dollar per centum upon such value.

Where the successor shall be a brother or sister, or a descendant of a brother or sister of the predecessor, a duty at the rate of two dollars per centum upon such value.

Where the successor shall be a brother or sister of the father or mother, or a descendant of a brother or sister of the father or mother of the predecessor, a duty at the rate of four dollars per centum upon such value.

Where the successor shall be a brother or sister of the grandfather or grandmother, or a descendant of the brother or sister of the grandfather or grandmother of the predecessor, a duty at the rate of five dollars per centum upon such value.

Where the successor shall be in any other degree of collateral consanguinity to the predecessor than is hereinbefore described, or shall be a stranger in blood to him, a duty at the rate of six dollars per centum upon such value.

13 U. S. St. 285 (Statute of June 30, 1864), ss. 134–150, provide for the assessment, payment and collection of the tax.

#### **Repeal.**

13 U. S. St., p. 303 (Statute of June 30, 1864), repealed the statute of July 1, 1862, as to probate and inheritance taxes.

#### **Saving Clause.**

Where the testator died in 1863, the government's claim accrued under the act of 1862 at the death of the testator, and was therefore not repealed by the statute of 1864, which expressly saved all taxes which had then accrued, and the statute of 1870, which again saves all taxes which had accrued. The testator left property to his wife, who died in 1876, and the court holds that the tax under the statute of 1862 should be assessed on this remainder. *United States v. Townsend*, 8 Fed. 306.

#### **Widow Exempted.**

13 U. S. St. 481 (Statute March 3, 1865) amended the statute of June 30, 1864, s. 133, by adding thereto an exemption of any succession "vesting before or subsequent to the passage of this act, where the successor shall be the wife of the predecessor."

### THE ACT OF 1866.

14 U. S. St. p. 140, 141 (Statute of July 13, 1866) amends the statute of June 30, 1864, ss. 124, 125, 137, 138, 145, 147, 148, 152, and repeals s. 150.

#### Where Estate Insolvent.

The plaintiff brought suit to recover the amount of the internal revenue tax he paid in 1872 to the United States collector on the ground that he as lessee of the real estate was obliged to pay the tax to avoid eviction and that the payment inured to the benefit of the succession. As the succession was insolvent there was no inheritance or legacy for the heirs, and it was not liable to an internal revenue tax, and therefore no recovery could be had. *Johnson v. Dunbar*, 28 La. Ann. 271.

#### Demand Necessary.

The United States statute of 1866 imposes no liability until a neglect or refusal to pay "after demand." *United States v. Pennsylvania Co.*, 27 Fed. 539.

**Minor Children.** 14 U. S. St., p. 140, amends statute of June 30, 1864, by exempting any legacy or share of personal property to a minor child "unless such legacy or share shall exceed the sum of one thousand dollars, in which case the excess only above that sum shall be liable to such taxation."

**When Accrues.** 14 U. S. St., p. 140 (Statute of July 13, 1866), amends the statute of June 30, 1864, s. 125, by inserting after the words "that the tax or duty aforesaid," the following: "shall be due and payable whenever the party interested in such legacy or distributive share or property or interest aforesaid shall become entitled to the possession or enjoyment thereof, or to the beneficial interest in the profits accruing therefrom, and the same." The administrative provisions of the statute are further strengthened.

#### Remainders Accelerated.

One James Long in 1803, by deed of settlement conveyed certain real estate in Maryland to his daughter for life, and after her death to her children and to the descendants of any deceased child. The daughter married and had children who were living at the time of the assessment of the tax, the parties having divided the property by amicable agreement.

The court holds that there can be no question that the deed of James Long was such a past disposition of real estate as conferred a succession upon the parties in remainder. "It was a past disposition of real estate where persons became beneficially entitled upon the



death of a person dying after the passage of the act. This constitutes a succession."

The court holds that this is one of those cases where the title to a succession has been accelerated by the extinction of prior interests by agreement of parties, and that the tax is payable upon the whole value of the remainder interests. *Brune v. Smith*, Fed. Cas. 2053.

#### **Massachusetts Act for Recording Receipts.**

Mass. St. 1868, c. 132, provided that registers of deeds should record evidences of payment of the federal inheritance tax.

Mass. St. 1868, appeared in Public Statutes, c. 24, s. 18.

Mass. Public Statutes, c. 24, s. 18, provides that the registers of deeds shall record receipts of United States collectors of internal revenue for succession taxes.

### **THE REPEAL OF 1870.**

U. S. St. 1870, c. 255 (16 U. S. St., p. 261). Approved July 14, 1870.

S. 17. And be it further enacted, That sections one hundred and twenty, one hundred and twenty-one, one hundred and twenty-two, and one hundred and twenty-three of the act of June thirty, eighteen hundred and sixty-four, entitled, "An act to provide internal revenue to support the government, to pay interest on the public debt, and for other purposes," as amended by the act of July thirteen, eighteen hundred and sixty-six, and the act of March two, eighteen hundred and sixty-seven, shall be construed to impose the taxes therein mentioned to the first day of August, eighteen hundred and seventy, but after that date no further taxes shall be levied or assessed under said sections; and all acts and parts of acts relating to the taxes herein repealed, and that all the provisions of said acts, shall continue in full force for levying and collecting all taxes properly assessed or liable to be assessed, or accruing under the provisions of former acts, or drawbacks, the right to which has already accrued or which may hereafter accrue under said acts, and for maintaining and continuing liens, fines, penalties, and forfeitures incurred under and by virtue thereof. And this act shall not be construed to affect any act done, right accrued, or penalty incurred under former acts, but every such right is hereby saved. And for carrying out and completing all proceedings which have been already commenced or that may be commenced to enforce such fines, penalties, and forfeitures, or criminal proceedings under said acts, and for the punishment of crimes of which any party shall be or has been found guilty.

#### **Remainder Interests.**

Where the testator dies before the repeal, leaving a life tenant who dies after the repeal, no tax can be assessed on the remainder interests. The repealing act contained a saving proviso and it was insisted that the tax accrued on the death of the testator.

The court finds under section 137, that the right does not accrue until the duty can be demanded, that is, when it is made payable,

in other words, at the end of thirty days, after becoming entitled to possession, and therefore the saving clause did not cover the case, and therefore the tax was not assessable. *Clapp v. Mason*, 94 U. S. 589, 24 L. Ed. 212, affirming Fed. Cas. 9233.

The same result was reached in the following cases: *United States v. Brice*, 8 Fed. 381; *United States v. Hazard*, 8 Fed. 380; *United States v. Rankin*, 3 McCrary 113, 8 Fed. 872.

### **Where Estate not Settled.**

The testator died in November, 1866, and his estate was not settled until January, 1873, and the court holds that as the tax could not be demanded before the repeal of the inheritance act the tax cannot be collected. *United States v. Kelley*, 28 Fed. 845.

### **Payment on Reaching Certain Age.**

Where the testator died July 17, 1870, leaving a legacy to his son payable "within three months after he shall arrive at the age of twenty-one years" and the legatee arrived at that age in 1872, no legacy tax could be collected on the authority of *Mason v. Sargent*, 104 U. S. 689. *Sturges v. United States*, 117 U. S. 363.

To the same effect see *United States v. New York Ins. & Trust Co.* (9 Ben. 413, Fed. Cas. 15,873). See, however, *Hellman v. United States* (15 Blatch. 131), Fed. Cas. 6341, affirming Fed. Cas. 15, 343.

### **Legacies Payable After Repeal.**

The testator died February 23, 1870, before, but less than one year before the repeal of the federal inheritance tax. The statute of July 14, 1870, repealed the tax on and after the first day of October, saving all taxes properly assessed or accruing under the provisions of former acts the right to which has already accrued and which may hereafter accrue under said acts.

The court holds that legacies under this act accrued at the death of the testator and had therefore accrued within this section 17, although they are payable at the earliest in a year after the death of the testator under Massachusetts law. *May v. Slack*, Fed. Cas. 9336.

### **Alien Estopped to Claim Devise to him Void.**

Where the devisee of real estate is an alien and has received the value of the real estate in partition proceedings he is estopped to

deny liability for the succession tax on the ground that the devise to him as an alien was void. *Scholey v. Rew*, 90 U. S. (23 Wall.) 331.

17 U. S. St., p. 402 (Statute of December 24, 1872, s. 2), provided for the collection of the taxes on legacies and successions.

### The Income Tax.

28 U. S. St., c. 53 (Statute of August 27, 1894, c. 349, s. 28), provides that in estimating the gains, profits and income for the purpose of the income tax money and the value of all personal property acquired by gift or inheritance shall be included. [This statute was declared unconstitutional by the Supreme Court in *Pollock v. Farmers' Loan & Trust Co.*, 157 U. S. 429. 15 U. S. Sup. Ct. 73.]

### THE ACT OF 1898.

30 U. S. St., p. 464. (Statute June 13, 1898). Approved and to take effect June 13, 1898.

**S. 29. Transfers taxable. — Rates.** That any person or persons having in charge or trust, as administrators, executors, or trustees, any legacies or distributive shares arising from personal property, where the whole amount of such personal property as aforesaid, shall exceed the sum of ten thousand dollars in actual value, passing, after the passage of this act, from any person possessed of such property, either by will or by the intestate laws of any state or territory, or any personal property or interest therein, transferred by deed, grant, bargain, sale, or gift, made or intended to take effect in possession or enjoyment after the death of the grantor or bargainor, to any person or persons, or to any body or bodies, politic or corporate, in trust or otherwise, shall be, and hereby are made subject to a duty or tax, to be paid to the United States, as follows: that is to say: Where the whole amount of said personal property shall exceed in value ten thousand and shall not exceed in value the sum of twenty-five thousand dollars the tax shall be.

*First.* Where the person or persons entitled to any beneficial interest in such property shall be the lineal issue or lineal ancestor, brother or sister to the person who died possessed of such property, as aforesaid, at the rate of seventy-five cents for each and every hundred dollars of the clear value of such interest in such property.

*Second.* Where the person or persons entitled to any beneficial interest in such property shall be the descendant of a brother or sister of the person who died possessed, as aforesaid, at the rate of one dollar and fifty cents for each and every hundred dollars of the clear value of such interest.

*Third.* Where the person or persons entitled to any beneficial interest in such property shall be the brother or sister of the father or mother, or a descendant of a brother or sister of the father or mother, of the person who died possessed as aforesaid, at the rate of three dollars for each, and every hundred dollars of the clear value of such interest.

*Fourth.* Where the person or persons entitled to any beneficial interest in such property shall be the brother or sister of the grandfather or grandmother, or a

descendant of the brother or sister of the grandfather or grandmother, of the person who died possessed as aforesaid, at the rate of four dollars for each and every hundred dollars of the clear value of such interest.

*Fifth.* Where the person or persons entitled to any beneficial interest in such property shall be in any other degree of collateral consanguinity than is hereinbefore stated, or shall be a stranger in blood to the person who died possessed, as aforesaid, or shall be a body politic or corporate, at the rate of five dollars for each and every hundred dollars of the clear value of such interest: Provided, That all legacies or property passing by will, or by the laws of any state or territory, to husband or wife of the person died possessed, as aforesaid, shall be exempt from tax or duty.

Where the amount or value of said property shall exceed the sum of twenty-five thousand dollars, but shall not exceed the sum or value of one hundred thousand dollars, the rates of duty or tax above set forth shall be multiplied by one and one-half; and where the amount or value of said property shall exceed the sum of one hundred thousand dollars, but shall not exceed the sum of five hundred thousand dollars, such rates of duty shall be multiplied by two; and where the amount or value of said property shall exceed the sum of five hundred thousand dollars, but shall not exceed the sum of one million dollars, such rates of duty shall be multiplied by two and one-half; and where the amount or value of said property shall exceed the sum of one million dollars, such rates of duty shall be multiplied by three.

### A Legacy Tax. — History.

The United States statute of 1898 is upon legacies or distributive shares and not upon the whole estate, as is shown further by the history of legislation in this country. This statute was modeled upon the statute of 1864, which was modeled upon the English statutes, which were decided to be legacy taxes. *Knowlton v. Moore*, 178 U. S. 41, 69, 20 S. Ct. 747, 44 L. Ed. 969.

### An Excise and not a Direct Tax.

The United States statute of 1898 is not a direct tax, and subject therefore to apportionment. The tax has at all times been considered as the antithesis of a direct tax, and as a duty or excise because of the particular occasion which gives rise to its levy. *Knowlton v. Moore*, 178 U. S. 41, 81, 20 S. Ct. 747, 44 L. Ed. 969.

### VALIDITY.

#### General Power of Congress.

It was claimed that as the transmission of property by death is exclusively subject to the regulating authority of the several states, therefore the levy by congress of a tax on inheritances of any kind is beyond the power of congress and is interference by the national

government with a matter which falls alone within the reach of state legislation. The court states, however, that transmission of property is a usual subject of taxation, and that the taxing power of congress extends to all usual objects of taxation subject to the limitations in the constitution.

The court points out that it is a fallacy to assume that the tax on the transmission or receipt of property occasioned by death is imposed on the exclusive power of the state to regulate the devolution of property upon death. The subject of taxation is the transmission or receipt, not the right existing to regulate. *Knowlton v. Moore*, 178 U. S. 41, 59, 20 S. Ct. 747, 44 L. Ed. 969.

The court points out that under the American constitutional system both the national and the state governments, moving in their respective orbits, have a common authority to tax many and diverse objects, but this does not cause the exercise of its lawful attributes by one to be a curtailment of the powers of government of the other. *Knowlton v. Moore*, 178 U. S. 41, 60, 20 S. Ct. 747, 44 L. Ed. 969.

### **Power to Tax Municipalities.**

The federal congress has the power to impose a succession tax upon a bequest to a municipal corporation of a state for a corporate and public purpose and U. S. St. June 13, 1898, 30 Stat. 448, as amended March 2, 1901, 31 Stat. 946, gives this authority. *Snyder v. Bettman*, 190 U. S. 249, Fuller, White and Peckham, JJ., dissenting.

### **Gifts to States or Municipalities.**

As congress has the power to tax successions, and the states have the power, and such power of the states extends to bequests to the United States, it follows that congress has the same power to tax the transmission of property by legacy to states or their municipalities, and that the exercise of that power in neither case conflicts with the proposition that neither the federal nor the state government can tax the property or agencies of the other, since the taxes imposed are not upon the property but upon the right to succeed to property. *Snyder v. Bettman*, 190 U. S. 249.

"The power to tax inheritances does not arise solely from the power to regulate the descent of property, but from the general authority to impose taxes upon all property within the jurisdiction of the taxing power. It has usually happened that the power has been exercised by the same government which regulates the succession to the property taxed; but this power is not destroyed

by the dual character of our government, or by the fact that under our constitution the devolution of property is determined by the laws of the several states." It was claimed that the authority to lay a succession tax arose solely from the power to regulate the descent of property. But the court replies that this proposition proves too much, that a denial of the right to regulate successions goes to the whole power of the government to impose a succession tax. *Snyder v. Bettman*, 190 U. S. 249, 252.

### **Progressive Rate Upheld.**

It was claimed that the progressive rate feature of the United States of 1898 was so repugnant to fundamental principles of equality and justice that the law should be held void, even though it transgresses no express limitation in the constitution.

The court remarks, "The review which we have made exhibits the fact that taxes imposed with reference to the ability of the person upon whom the burden is placed to bear the same have been levied from the foundation of the government. So, also, some authoritative thinkers, and a number of economic writers, contend that a progressive tax is more just and equal than a proportional one. In the absence of constitutional limitation, the question whether it is or is not is legislative and not judicial. The grave consequences which it is asserted must arise in the future if the right to levy a progressive tax be recognized involves in its ultimate aspect the mere assertion that free and representative government is a failure, and that the grossest abuses of power are foreshadowed unless the courts usurp a purely legislative function. If a case should ever arise, where an arbitrary and confiscatory exaction is imposed bearing the guise of a progressive or any other form of tax, it will be time enough to consider whether the judicial power can afford a remedy by applying inherent and fundamental principles for the protection of the individual, even though there be no express authority in the constitution to do so. That the law which we have construed affords no ground for the contention that the tax imposed is arbitrary and confiscatory, is obvious." *Per White, J., in Knowlton v. Moore*, 178 U. S. 41, 109, 20 S. Ct. 747, 44 L. Ed. 969.

### **Uniformity.**

The United States constitution, article 1, section 8, provides that "duties, imposts and excises shall be uniform throughout the United States." The court finds, considering the history of the clause and

the antecedent legislation, that "uniform" is confined to geographical uniformity. *Knowlton v. Moore*, 178 U. S. 41, 108, 20 S. Ct. 747, 44 L. Ed. 969.

### **TRANSFERS AFFECTED.**

#### **Transactions on Consideration.**

The words in the United States statute of 1898 "deed, grant, bargain, sale or gift" refer to transfers without consideration and operative by way of gift and not transactions made in the ordinary course of business upon a valuable consideration. So where a son was in partnership with his father under a contract which provided in part that on the father's death his interest in the partnership should belong to the son, this is not a transfer taxable under the United States statute of 1898, as the son has vested rights under the partnership agreement during the life of the testator. *Blair v. Herold*, 150 Fed. 199, affirmed in 86 C. C. A. 64, 158 Fed. 804.

#### **Compromise.**

Where there is a contest over a will and under the Massachusetts statute the contest is settled by a compromise agreement for distribution and the will is never probated, the compromise is for the purpose of the inheritance tax the will under which the property passed. *McCoy v. Gill*, 156 Fed. 985, C. C. A.

#### **Property of Alien.**

The court holds that United States statute of 1898 does not apply to intangible personal property of a non-resident alien who never had a domicile in the United States and died abroad, such personal property being within the United States and having passed to his son, also an alien domiciled abroad, as sole legatee and next-of-kin of the deceased, partly under a will executed abroad and partly under the intestate laws of Spain. There is no question of the power of the legislature to tax the personal property of non-residents, but the question is of its intent to do so by the particular act in question. As the property in this case did not pass under any will executed in any state or territory of the United States or by the intestate laws of any such state or territory, the case is not within the literal words of the act unless the word "state" is used in a sense broad enough to include a foreign state or territory.

The court finds that the English cases reach the conclusion that under the general act imposing a duty upon legacies the law of

the domicile of the testator controls. If he be domiciled abroad, whether an alien or a British subject, his legacies are exempt whether the property be in England at the time of his death or be subsequently sent there by his executors for local administration and distribution. *Eidman v. Martinez*, 184 U. S. 578, 581, 22 S. Ct. 515, 46 L. Ed. 697.

The court holds that property situated in this country belonging to a non-resident decedent is not subject to the federal inheritance tax of 1898, although the will was executed in New York in 1890, during a temporary sojourn there. The court relies upon *United States v. Hunnewell*, 13 Fed. Rep. 617. *Moore v. Ruckgaber*, 184 U. S. 593, 22 S. Ct. 521, 46 L. Ed. 705, affirming 104 Fed. 947, 31 Civ. Proc. 310.

It was suggested in the argument of *Frederickson v. Louisiana* that the government of the United States is incompetent to regulate testamentary dispositions or laws of inheritance of foreigners in reference to property within the states. The court observes that the question is one of great magnitude and declines to consider it. *Frederickson v. State*, 23 How. (U. S.) 445.

### Limited to Wills Executed in this Country.

The words confining the application of the act to property passing "either by will or by the intestate laws of any state or territory" — the words, "passing by will," are limited to wills executed in "any state or territory." *Eidman v. Martinez*, 184 U. S. 578, 590, 22 S. Ct. 515, 46 L. Ed. 697, citing *United States v. Hunnewell*, 13 Fed. 617.

The attorney general had declined to rule on this question. See 23 Op. Att. Gen. 221 (September 7, 1900).

### District of Columbia.

The United States statute of 1898 embraces the District of Columbia. *Knowlton v. Moore*, 178 U. S. 41, 20 S. Ct. 747, 44 L. Ed. 969.

## BENEFICIARIES AFFECTED.

### Annuity.

The testator provided that the trustee under a trust created by him should pay from the trust including accumulations of income as well as the corpus at the rate of \$14,000 per year to certain persons named; and the court holds that this is a bequest of an annuity and so is taxable and not as a bequest of income under the statute



of 1898, section 29. *Peck v. Kinney*, 128 Fed. 313, reversed 143 Fed. 76, 74 C. C. A. 270.

Where the testator gave property in trust to pay to the beneficiary \$15,000 a year for life out of the whole income of the trust estate, the specific payments only are taxable as they become due under the United States statute of 1898 as amended in 1902; as the statute provides that legacies are taxable only as they come to the possession of the beneficiary. *Disston v. McClain*, 147 Fed. 114, 77 C. C. A. 340, reversing 143 Fed. 191.

### **To One on Reaching a Certain Age.**

A legacy to a daughter when she is eighteen years old is contingent and not subject to the United States tax of 1898, section 29. *Heberton v. McClain*, 135 Fed. 226.

The same result was reached in *Herold v. Shanley*, 146 Fed. 20, 76 C. C. A. 478, affirming 141 Fed. 423 (N. J.).

### **Life Tenant a Legatee.**

Where a trust fund is created to pay the income to F. and upon his death the principal to be disposed of as part of the residue, two estates are created which pass under the statute — the life estate and the remainder. The life tenant is to be regarded as a legatee for the purpose of the payment of the tax upon the life estate under the United States statute of 1898. *Fitzgerald v. Rhode Island Hospital Trust Co.*, 24 R. I. 59, 52 Atl. 814.

### **Lineal Issue. — Adopted Child.**

Under the United States statute of 1898 an adopted child under the law of her state, although she was to all intents and purposes the child and legal heir of the testator, is still not a "lineal issue." *Kerr v. Goldsborough*, 150 Fed. 289, 80 C. C. A. 177.

### **Son-in-law.**

A legacy to a son-in-law is subject to the inheritance tax under the statute of 1898, section 29, as he is not a blood relation. *King v. Eidman*, 128 Fed. 815.

### **Trustee not a "Person Possessed."**

Under the United States statute of 1898, section 29, a trustee, who at the time of the passage of the act held personal property upon a trust under a will to be distributed on a future date under the will is not "a person possessed" of such property. Personal

estate passing under the intestate laws passes from the intestate himself and never from the administrator. *McClain v. Pennsylvania Co. for Insurance and Annuities*, 108 Fed. 618, 47 C. C. A. 529.

### **Remainders not Taxable Till They Fall into Possession.**

The supreme court decides that future interests, whether vested or contingent, were not taxable until they fell into possession, following the construction placed on numerous state statutes and the earlier federal acts.

Sections 29 and 30 of United States statute of 1898 do not impose any tax upon a vested future interest before the period when possession or enjoyment had attached. The practice under the act of 1898 was to tax only beneficial interests where the right to possess or enjoy had accrued. It was thought that the amendment of March 2, 1901, 31 Stat. 946, changed this situation. The amendments which the tax officials decided made vested interests subject to taxation were that the tax or duty should be due and payable within one year after the death of the decedent; and that the executor, administrator or trustee should make the return of the estate in his control within thirty days after taking charge.

The court holds, however, that these amendments did not justify the construction congress intended, because death duties to become due within one year as to legacies and distributive shares were not capable of being immediately possessed or enjoyed, and were therefore not subject to taxation under the original act.

The testator died September 12, 1899, leaving a will by which he placed the residue of his property in trust for the use of his son in a spendthrift trust until he arrives at the age of twenty-one and thereafter to pay the income to him until he arrives at the age of thirty, which would occur after 1902, when he shall be put in full possession of one-half the trust estate, the income from the balance to be paid to the son until he shall reach the age of thirty-five, when the balance of the trust estate shall be placed in his hands.

There is no authority under the United States statute of 1898 for taxing the interest of the son conditioned on his attaining the ages of thirty and thirty-five years respectively. It is therefore unnecessary to determine whether such interest was technically a vested remainder or a contingent remainder. Such an interest was declared to be contingent in *In re Tracy*, 179 N. Y. 501. *Vanderbilt v. Eidman*, 196 U. S. 480, 501, 25 S. Ct. 331, 49 L. Ed. 563.

## RATES.

### Rate Determined by Size of Legacy.

The court points out the gross inequalities which would result from a construction of the United States statute of 1898 that the rate of tax is determined by the size of the estate rather than the size of the legacy. The result would be that two persons receiving the same legacy from estates of different sizes would pay a different tax, and the court is bound to avoid a construction which would occasion great inequality and injustice if possible. This appears clear also from a comparison with the statute of 1864, and from the text of the act itself. This is also clear from the title which describes as subject to taxation "legacies and distributive shares of personal property," and also appears by the opening words of section 29, describing the tax as being upon "any interest which may have been transferred by," etc. The provisions for collection of the tax contained in section 30 of the act confirm the construction that the passing of each legacy or distributive share, and not the entire personal estate, forms the subject of the tax. *Knowlton v. Moore*, 178 U. S. 41, 67, 20 S. Ct. 747, 44 L. Ed. 969.

### Exemptions.

#### *Construction of Exemptions.*

"It is an old and familiar rule of the English courts, applicable to all forms of taxation, and particularly special taxes, that the sovereign is bound to express its intention to tax in clear and unambiguous language, and that a liberal construction be given to words of exception confining the operation of duty" . . . "though the rule regarding exemptions from general laws imposing taxes may be different." *Per* Brown, J., in *Eidman v. Martinez*, 184 U. S. 578, 583, 22 S. Ct. 515, 46 L. Ed. 697.

#### *Legacies exceeding \$10,000.*

The tax is upon such legacies and distributive shares arising from personal property as exceed ten thousand dollars in actual value, and not upon the gross amount of the estate. 22 Op. Att. Gen. 298 (January 5, 1899).

#### *Federal Bonds.*

The United States statute of 1898 is valid and the legacy tax can be imposed even although the legacies are composed of federal bonds. The court holds that the exempting clauses in the statutes

and on the face of the bonds do not mean that "a state or the United States may not tax inheritances and legacies, regardless of the character of the property of which they are composed. That some of the holders of United States bonds may have paid franchise taxes to the states, and others may have paid state or federal inheritance and legacy taxes, has nothing to do with the contract between the United States and the bondholders. The United States will have complied with their contract when they pay to the original holders of their bonds, or to their assigns, the interest when due, in full, and the principal, when due, in full." *Per Shiras, J., in Murdock v. Ward*, 178 U. S. 139, 148, 20 S. Ct. 775, 44 L. Ed. 1009.

30 U. S. St., p. 464 (Statute of June 13, 1898). Approved and to take effect June 13, 1898.

S. 30. Collection. That the tax or duty aforesaid shall be a lien and charge upon the property of every person who may die as aforesaid for twenty years, or until the same shall, within that period, be fully paid to and discharged by the United States; and every executor, administrator, or trustee, before payment and distribution to the legatees, or any parties entitled to beneficial interest therein, shall pay to the collector or deputy collector of the district of which the deceased person was a resident the amount of the duty or tax assessed upon such legacy or distributive share, and shall also make and render to the said collector or deputy collector a schedule, list, or statement, in duplicate, of the amount of such legacy or distributive share, together with the amount of duty which has accrued, or shall accrue, thereon, verified by his oath or affirmation to be administered and certified thereon by some magistrate or officer having lawful power to administer such oaths, in such form and manner as may be prescribed by the Commissioner of Internal Revenue, which schedule, list, or statement shall contain the names of each and every person entitled to any beneficial interest therein, together with the clear value of such interest, the duplicate of which schedule, list, or statement shall be by him immediately delivered, and the tax thereon paid to such collector; and upon such payment and delivery of such schedule, list, or statement said collector or deputy collector shall grant to such person paying such duty or tax a receipt or receipts for the same in duplicate which shall be prepared as hereinafter provided. Such receipt or receipts, duly signed and delivered by such collector or deputy collector, shall be sufficient evidence to entitle such executor, administrator, or trustee to be credited and allowed such payment by every tribunal which, by the laws of any state or territory, is, or may be, empowered to decide upon and settle the accounts of executors and administrators. And in case such executor, administrator, or trustee shall refuse or neglect to pay the aforesaid duty or tax to the collector or deputy collector, as aforesaid, within the time hereinbefore provided, or shall neglect or refuse to deliver to said collector or deputy collector the duplicate of the schedule, list, or statement of such legacies, property, or personal estate, under oath, as aforesaid, or shall neglect or refuse to deliver the schedule, list, or statement, of such legacies, property, or personal estate, under oath, as aforesaid, or shall deliver to said collector or deputy collector a false schedule or state-

ment of such legacies, property, or personal estate, or give the names and relationship of the persons entitled to beneficial interests therein untruly, or shall not truly and correctly set forth and state therein the clear value of such beneficial interest, or where no administration upon such property or personal estate shall have been granted or allowed under existing laws, the collector or deputy collector shall make out such lists and valuation as in other cases of neglect or refusal, and shall assess the duty thereon; and the collector shall commence appropriate proceedings before any court of the United States, in the name of the United States, against such person or persons as may have the actual or constructive custody or possession of such property or personal estate, or any part thereof, and shall subject such property or personal estate, or any portion of the same, to be sold upon the judgment of decree of such court, and from the proceeds of such sale the amount of such tax or duty, together with all costs and expenses of every description to be allowed by such court, shall be first paid, and the balance, if any, deposited according to the order of such court, to be paid under its direction to such person or persons as shall establish title to the same. The deed or deeds, or any proper conveyance of such property or personal estate, or any portion thereof, so sold under such judgment or decree, executed by the officer lawfully charged with carrying the same into effect, shall vest in the purchaser thereof all the title of the delinquent to the property or personal estate sold under and by virtue of such judgment or decree, and shall release every other portion of such property or personal estate from the lien or charge thereon created by this act. And every person or persons who shall have in his possession, charge, or custody any record, file, or paper containing, or supposed to contain, any information concerning such property or personal estate, as aforesaid, passing from any person who may die, as aforesaid, shall exhibit the same at the request of the collector or deputy collector of the district, and to any law officer of the United States, in the performance of his duty under this act, his deputy or agent, who may desire to examine the same. And if any such person, having in his possession, charge, or custody any such records, files, or papers, shall refuse or neglect to exhibit the same on request, as aforesaid he shall forfeit and pay the sum of five hundred dollars; Provided, That in all legal controversies where such deed or title shall be the subject of judicial investigation, the recital in said deed shall be *prima facie* evidence of its truth, and that the requirements of the law had been complied with by the officers of the government.

### APPRAISAL.

#### Appraisal of Life Interest after Death of Life Tenant.

Where a life tenant had died before the assessment of the tax on his interest mortality tables should not be used in assessing the value of the interest. *Kahn v. Herold*, 147 Fed. 575, affirmed in 86 C. C. A. 598, 159 Fed. 608, 163 Fed. 947.

#### Remainder after Death or Remarriage.

To appraise an interest after the death or remarriage of the widow mortuary tables should not be used. While the probability

of death may be estimated from these tables, there are no statistics available from which the probability of remarriage may even be conjectured. *Herold v. Shanley*, 146 Fed. 20, 76 C. C. A. 478, affirming 141 Fed. 423 (N. J.).

**Purchase money mortgages** constitute a debt of the estate to be deducted from the residuary legacy in assessing the inheritance tax. *Brown v. Kinney*, 128 Fed. 310, reversed on another point in 137 Fed. 1018.

### THE AMENDMENT OF 1901.

31 U. S. St., p. 946 (Statute of March 2, 1901, s. 10).

S. 10. That section twenty-nine of said act is hereby amended by adding at the end of said section the following: "Provided, That nothing in this section shall be construed to apply to bequests or legacies for uses of a religious, literary, charitable, or educational character, or for the encouragement of art, or to legacies or bequests to societies for the prevention of cruelty to children, including all bequests or legacies of such character on which the tax imposed had not been paid or collected on the first day of March, nineteen hundred and one: And provided further, That the provisions of this act and of the act hereby amended shall not be held to apply to any estate where the testator or intestate died before June thirteenth, eighteen hundred and ninety-eight," so that said section as amended shall read as follows:—

S. 11. That section thirty of said act is hereby amended so as to read as follows:—

"S. 30. That the tax or duty aforesaid shall be due and payable in one year after the death of the testator and shall be a lien and charge upon the property of every person who may die as aforesaid for twenty years, or until the same shall, within that period, be fully paid to and discharged by the United States; and every executor, administrator, or trustee having in charge or trust any legacy or distributive share, as aforesaid, shall give notice thereof, in writing, to the collector or deputy collector of the district where the deceased grantor or bargainor last resided within thirty days after he shall have taken charge of such trust, and every executor, administrator, or trustee, before payment and distribution to the legatees, or any parties entitled to beneficial interest therein, shall pay to the collector or deputy collector of the district of which the deceased person was a resident, or in which the property was located in case of non-residents, the amount of the duty or tax assessed upon such legacy or distributive share, and shall also make and render to the said collector or deputy collector a schedule, list, or statement, in duplicate, of the amount of such legacy or distributive share, together with the amount of duty which has accrued, or shall accrue, thereon, verified by his oath or affirmation, to be administered and certified thereon by some magistrate or officer having lawful power to administer such oaths, in such form and manner as may be prescribed by the Commissioner of Internal Revenue, which schedule, list, or statement shall contain the names of each and every person entitled to any beneficial interest therein, together with the clear value of such interest, the duplicate of which schedule, list, or statement shall be by him immediately delivered, and the tax thereon paid to

such collector; and upon such payment and delivery of such schedule, list, or statement said collector or deputy collector shall grant to such person paying such duty or tax a receipt or receipts for the same in duplicate, which shall be prepared as hereinafter provided. Such receipt or receipts, duly signed and delivered by such collector or deputy collector, shall be sufficient evidence to entitle such executor, administrator, or trustee to be credited and allow such payment by every tribunal which, by the laws of any state or territory, is, or may be, empowered to decide upon and settle the accounts of executors and administrators. And in case such executor, administrator, or trustee shall refuse or neglect to pay the aforesaid duty or tax to the collector or deputy collector, as aforesaid, within the time hereinbefore provided, or shall neglect or refuse to deliver to said collector or deputy collector the duplicate of the schedule, list, or statement of such legacies, property, or personal estate, under oath, as aforesaid, or shall neglect or refuse to deliver the schedule, list, or statement of such legacies, property, or personal estate, under oath, as aforesaid, or shall deliver to said collector or deputy collector a false schedule or statement of such legacies, property, or personal estate, or give the names and relationship of the persons entitled to beneficial interests therein untruly, or shall not truly and correctly set forth and state therein the clear value of such beneficial interest or where no administration upon such property or personal estate shall have been granted or allowed under existing laws, the collector or deputy collector shall make out such lists and valuation as in other cases of neglect or refusal, and shall assess the duty thereon; and the collector shall commence appropriate proceedings before any court of the United States, in the name of the United States, against such person or persons as may have the actual or constructive custody or possession of such property or personal estate, or any part thereof, and shall subject such property or personal estate, or any portion of the same, to be sold upon the judgment or decree of such court, and from the proceeds of such sale the amount of such tax or duty, together with all costs and expenses of every description to be allowed by such court, shall be first paid, and the balance, if any, deposited according to the order of such court, to be paid under its direction to such person or persons as shall establish title to the same. The deed or deeds, or any proper conveyance of such property or personal estate, or any portion thereof, so sold under such judgment or decree, executed by the officer lawfully charged with carrying the same into effect, shall vest in the purchaser thereof all the title of the delinquent to the property or personal estate sold under and by virtue of such judgment or decree, and shall release every other portion of such property or personal estate from the lien or charge thereon created by this act. And every person or persons who shall have in his possession, charge, or custody any record, file, or paper containing, or supposed to contain, any information concerning such property or personal estate, as aforesaid, passing from any person who may die, as aforesaid, shall exhibit the same at the request of the collector or deputy collector of the district, and to any law officer of the United States, in the performance of his duty under this act, his deputy or agent, who may desire to examine the same. And if any such person, having in his possession, charge, or custody, any such records, files, or papers, shall refuse or neglect to exhibit the same on request, as aforesaid, he shall forfeit and pay the sum of five hundred dollars: Provided, That in all legal controversies where such deed or title shall be the subject of judicial investigations, the recital in said deed shall be *prima*

*facie* evidence of its truth, and that the requirements of the law had been complied with by the officers of the government. And provided further, That in case of wilful neglect, refusal, or false statement by such executor, administrator, or trustee, as aforesaid, he shall be liable to a penalty of not exceeding one thousand dollars, to be recovered with costs of suit. Any tax paid under the provisions of sections twenty-nine and thirty shall be deducted from the particular legacy or distributive share on account of which the same is charged."

### REPEAL OF 1902.

32 U. S. St. (Statute of April 12, 1902, s. 7) repeals the legacy taxes.

S. 8. That all taxes or duties imposed by section twenty-nine of the Act of June thirteenth, eighteen hundred and ninety-eight, and amendments thereof, prior to the taking effect of this act, shall be subject, as to lien, charge, collection and otherwise, to the provisions of section thirty of said Act of June thirteenth, eighteen hundred and ninety-eight, and amendments thereof, which are hereby continued in force, as follows:—

#### WHEN TAX IS "IMPOSED."

##### Where Testator Died within One Year before Repeal.

Where the testator died March 15, 1902, leaving a will which was probated May 3, 1902, and where the legacies were not paid before 1905, the court holds that they are subject to the statute of 1898; that the tax was imposed on an immediate right of possession or enjoyment during the operation of the statute of 1898 in such sense as to be within the intent of the saving clause of the repealing statute.

The court concludes that upon the passing by death of a vested right to the immediate possession or enjoyment of a legacy or distributive share there was imposed the tax or duty exacted upon every such right of succession which was saved by the saving clause of the repealing act.

The fact that under the statute of 1898 the tax was not due and payable for a year after the death of the testator does not free the estate from the tax. *Hertz v. Woodman*, 218 U. S. 205, 30 S. Ct. 621.

This case would seem to supersede the following cases, which appear to hold that no tax can be levied where the testator died within one year before the repeal of the inheritance tax: *United States v. Marion Trust Co.*, 205 U. S. 539, 27 S. Ct. 794, 51 L. Ed. 119, affirming 142 Fed. 120, 73 C. C. A. 610, 135 Fed. 866, 127 Fed. 386. *McCoach v. Bamberger*, 161 Fed. 90, affirming 142 Fed. 120, 73 C. C. A. 610. See *Tilghman v. Eidman*, 131 Fed. 651. affirmed in 203 U. S. 580, 27 S. Ct. 779.

Where a testator died in December, 1901, bequeathing certain property in trust to pay the income to the son for life, the life estate of the son became vested on the death of the testator and was there-



fore subject to the inheritance tax. The tax was "imposed" by the statute itself at the time of vesting without reference to the time of payment or to its assessment. *Westhus v. St. Louis Union Trust Co.*, 164 Fed. 795, 90 C. C. A., 441, 168 Fed. 617.

### Where Estate Unsettled.

The testator died in 1900, but owing to a dispute among heirs and to the pendency of unsettled claims the estate was not distributed until after the passage of the repealing act; and pending administration no effort was made by the government to assess the tax upon the estate. Under these circumstances no tax or duty had been "imposed" under the act of 1898 before the repealing statute, and therefore the legacy is not subject to tax. *United States v. Marion Trust Co.*, 143 Fed. 301, 74 C. C. A. 439, affirmed in 205 U. S. 539, 27 S. Ct. 794, 51 L. Ed. 1191.

### Income not Due.

Where legatees were entitled under a will to receive the income only when they reached certain ages after July 1, 1902, when the statute of 1898 was repealed, such income is not subject to tax. *Union Trust Co. of San Francisco v. Lynch*, 148 Fed. 49, affirmed 164 Fed. 161.

## REFUNDING.

32 U. S. St., p. 406 (Statute of June 27, 1902).

AN ACT TO PROVIDE FOR REFUNDING TAXES PAID UPON LEGACIES AND BEQUESTS for uses of a religious, charitable, or educational character, for the encouragement of art, and so forth, under the Act of June thirteenth, eighteen hundred and ninety-eight, and for other purposes.

S. 1. Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury, under appropriate rules and regulations to be prescribed by him, be, and he is hereby, authorized and directed to pay, out of any money in the treasury not otherwise appropriated, to the corporations, associations, societies, or individuals as trustees or executors, such sums of money as have been paid by them as taxes upon bequests or legacies for uses of a religious, literary, charitable, or educational character, or for the encouragement of art, or legacies or bequests to societies for the prevention of cruelty to children, under the provisions of section twenty-nine of the Act entitled "An Act to provide ways and means to meet war expenditures, and for other purposes," approved June thirteenth, eighteen hundred and ninety-eight.

S. 3. That in all cases where an executor, administrator, or trustee shall have paid, or shall hereafter pay, any tax upon any legacy or distributive share of

personal property under the provisions of the Act approved June thirteenth, eighteen hundred and ninety-eight, entitled "An Act to provide ways and means to meet war expenditures, and for other purposes," and amendments thereof, the secretary of the treasury be, and he is hereby, authorized and directed to refund, out of any money in the treasury not otherwise appropriated, upon proper application being made to the Commissioner of Internal Revenue, under such rules and regulations as may be prescribed, so much of said tax as may have been collected on contingent beneficial interests which shall not have become vested prior to July first, nineteen hundred and two. And no tax shall hereafter be assessed or imposed, under said act approved June thirteenth, eighteen hundred and ninety-eight, upon or in respect of any contingent beneficial interest which shall not become absolutely vested in possession or enjoyment prior to said July first, nineteen hundred and two.

### **On Contingent Beneficial Interests.**

This statute was declaratory of the construction of the act of 1898 as amended in 1901 placed upon it by the court that remainder interests are not taxable until possession is taken. *Vanderbilt v. Eidman*, 196 U. S. 480, 25 S. Ct. 331, 49 L. Ed. 563.

The testator died January 5, 1901, after making a will which left property to the trustees in trust to pay the income to the daughters of the testator for life, and on her death leaving to the issue, and in default of issue to the testator's heirs; the interests created are vested and subject to tax. *Chouteau v. Allen*, 95 C. C. A. 582, 170 Fed. 412, relying upon *Westhus v. Union Trust Company*, 164 Fed. 795, 168 Fed. 617.

Where property is placed in trust to pay to the widow a certain annual income and pay the balance to the children, the corpus to be divided among the children, the children have a vested estate in the testator's residuary estate but not in the portion of the estate set apart for the benefit of the widow for her life. *Tille Guarantee & Trust Co. v. Ward*, 164 Fed. 459. See *Brown v. Kinney*, 128 Fed. 310, reversed 137 Fed. 1018, 70 C. C. A. 679, on the authority of *Vanderbilt v. Eidman*, 196 U. S. 480, 25 S. Ct. 331, 49 L. Ed. 563.

### **Payment in Ignorance.**

Where a tax was paid by executors in ignorance of the fact that the life tenancy upon which the tax they were paying had been assessed had been terminated by the death of the life tenant before the assessment was made — this is not a voluntary payment; as to constitute a voluntary payment it must be made with full knowledge of all the facts and circumstances. *Kahn v. Herold*, 147 Fed. 575, affirmed in 86 C. C. A. 598, 159 Fed. 608, 163 Fed. 947.

**Limitations.**

United States Revised Statutes, section 3228, limiting the time for presenting claims for refund of revenue taxes has no application to a claim for the refunding of inheritance taxes illegally collected under the statute of 1898. *Thacher v. United States*, 149 Fed 902.

**Interest.**

Interest may be allowed in a suit to recover legacy taxes paid, as it is not in form an action against the United States. *Kinney v. Conant*, 166 Fed. 720, 92 C. C. A. 410.

**Practice on Refunding.**

The tax was paid on demand under written protest, giving the grounds for refusal the case arising under the United States Revenue Act, the testator being domiciled in New York State. On denial of a petition for refunding, action was brought in the U. S. Circuit Court. *Knowlton v. Moore*, 178 U. S. 41, 47, 20 S. Ct. 747, 44 L. Ed. 969.

*High v. Coyne*, 178 U. S. 111, follows *Knowlton v. Moore*, 178 U. S. 41, and holds that the interpretation of the statute which was held to be unsound in *Knowlton v. Moore* was adopted and enforced by the officers charged with the administration of the law. The ends of justice, therefore, require that the interpretation of the statute should not be foreclosed by the decree of the court, although there is nothing in the record to enable the court to say that the statute was by the collector mistakingly construed. *High v. Coyne*, 178 U. S. 111. *Fidelity Insurance Co. v. McClain*, 178 U. S. 113.

Where it appears by the record that the tax actually levied and paid on legacies under the United States inheritance law were computed upon the mistaken assumption that the amount of the estate of the testatrix was the measure of the tax and not the amount of the respective legacies, the taxpayer is entitled to be repaid the excess this imposed upon his legacy. *Sherman v. United States*, 178 U. S. 150, 152.

# TABLES.

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## States with an Inheritance Tax Law. States which Tax Direct Inheritances. States which Tax Collateral Inheritances.

State.	Inheritance tax law?	Direct inht. tax?	Collateral inht. tax?
Alabama.....	No	No	No
Arizona.....	No	No	No
Arkansas .....	Yes	Yes	Yes
California .....	Yes	Yes	Yes
Colorado .....	Yes	Yes	Yes
Connecticut .....	Yes	Yes	Yes
Delaware .....	Yes	No	Yes
District of Columbia .....	No	No	No
Florida .....	No	No	No
Georgia.....	No	No	No
Hawaii .....	Yes	Yes	Yes
Idaho .....	Yes	Yes	Yes
Illinois .....	Yes	Yes	Yes
Indiana.....	No	No	No
Iowa .....	Yes	No	Yes
Kansas .....	Yes	Yes	Yes
Kentucky .....	Yes	No	Yes
Louisiana .....	Yes	Yes	Yes
Maine .....	Yes	Yes	Yes
Maryland .....	Yes	No	Yes
Massachusetts .....	Yes	Yes	Yes
Michigan .....	Yes	Yes	Yes
Minnesota .....	Yes	Yes	Yes
Mississippi .....	No	No	No
Missouri .....	Yes	No	Yes
Montana .....	Yes	Yes	Yes
Nebraska .....	Yes	Yes	Yes
Nevada.....	No	No	No
New Hampshire .....	Yes	No	Yes
New Jersey .....	Yes	No	Yes

State.	Inheritance tax law?	Direct inht. tax?	Collateral inht. tax?
New Mexico .....	No	No	No
New York .....	Yes	Yes	Yes
North Carolina .....	Yes	Yes	Yes
North Dakota .....	Yes	No	Yes
Ohio .....	Yes	No	Yes
Oklahoma .....	Yes	Yes	Yes
Oregon .....	Yes	Yes	Yes
Pennsylvania .....	Yes	No	Yes
Porto Rico .....	Yes	Yes	Yes
Rhode Island .....	No	No	No
South Carolina .....	No	No	No
South Dakota .....	Yes	Yes	Yes
Tennessee .....	Yes	Yes	Yes
Texas .....	Yes	No	Yes
Utah .....	Yes	Yes	Yes
Vermont .....	Yes	No	Yes
Virginia .....	Yes	No	Yes
Washington .....	Yes	Yes	Yes
West Virginia .....	Yes	Yes	Yes
Wisconsin .....	Yes	Yes	Yes
Wyoming .....	Yes	Yes	Yes

## RATES AND EXEMPTIONS.

	Direct Inheritances.		Collateral Inheritances.	
	Rate	Exemption	Rate	Exemption
Alabama...	..	Not taxed	..	Not taxed
Arizona....	..	Not taxed	..	Not taxed
Arkansas*	1%	\$5,000	2-6%	\$1,000-2,000
California..	1-5%	10,000-24,000	2½-25%	500-2,000
Colorado...	2%	10,000	3-10%	500
Conn.* <i>a</i> ...	1%	10,000	5%	500
Delaware ..	..	Not taxed	1-5%	500
Dist. of Col.	..	Not taxed	..	Not taxed
Florida ....	..	Not taxed	..	Not taxed
Georgia....	..	Not taxed	..	Not taxed
Hawaii ....	2%	1,000	5%	500
Idaho .....	1-3%	4,000-10,000	1½-15%	500-2,000
Illinois ....	1-2%	20,000	2-10%	500-2,000
Indiana....	..	Not taxed	..	Not taxed
Iowa* <i>b</i> ...	..	Not taxed	5%	1,000
Kansas ....	1-5%	5,000	3-15%	0-1,000
Kentucky..	..	Not taxed	5%	500
Louisiana <i>c</i> .	2%	10,000	5%	Nothing
Maine ....	1-2%	500-10,000	4-7%	500
Maryland*	..	Not taxed	5%	500
Mass. ....	1-2%	1,000-10,000	3-5%	1,000
Michigan ..	1%	2,000	5%	100
Minn. ....	1-4½%	3,000-10,000	3-15%	100-1,000
Mississippi	..	Not taxed	..	Not taxed
Missouri	..	Not taxed	5%	Nothing
Montana* .	1%	7,500	5%	500
Nebraska ..	1%	10,000	2-6%	500-2,000
Nevada....	..	Not taxed	..	Not taxed
New Hamp.	..	Not taxed	5%	Nothing
New Jersey	..	Not taxed	5%	500
New Mex. .	..	Not taxed	..	Not taxed
New York .	1-4%	5,000	5-8%	1,000
N. Caro. <i>d</i> .	¾%	2,000	1½-15%	2,000

Direct Inheritances.			Collateral Inheritances.	
N. Dakota	..	Not taxed	2%	25,000
Ohio*	..	Not taxed	5%	200
Oklahoma e	1%	5,000-10,000	1½-5%	100-500
Oregon f ..	1%	5,000	2-6%	500-2,000
Penn. ....	..	Not taxed	5%	250
Porto Rico	1-3%	200	3-9%	200
R. Island ..	..	Not taxed	..	Not taxed
S. Carolina.	..	Not taxed	..	Not taxed
S. Dakota .	1%	5,000-20,000	2-10%	100-500
Tennessee*	1-1¼%	5,000	5%	250
Texas .....	..	Not taxed	2-12%	500-2,000
Utah* .....	5%	10,000	5%	10,000
Vermont ..	..	Not taxed	5%	Nothing
Virginia ...	..	Not taxed	5%	Nothing
Washington*	1%	10,000	3-12%	Nothing
W. Virginia	1-3%	10,000-15,000	3-15%	Nothing
Wisconsin..	1-3%	2,000-10,000	1½-15%	100-500
Wyoming*	2%	10,000	5%	500

\* The exemption in the states marked with an asterisk has been construed to apply to the estate as a whole rather than to individual shares.

a. Connecticut — For non-residents, exemption varies according to portion of estate within the state.

b. Iowa taxes non-resident aliens 10-20%.

c. Louisiana exempts property that bore its just proportion of taxes during owner's life.

d. North Carolina — Exempts husband or wife.

e. Oklahoma — The tax increases progressively so that a literal construction would result in confiscation of all in excess of certain amounts in large estates.

f. Oregon — Exempts entire estate if less than \$10,000; direct; \$500 to \$5,000 collateral.

**States which tax Stock of Domestic Corporations owned  
by Non-residents. States which tax Stock owned  
by Non-residents of Foreign Corporations  
owning property within State.<sup>1</sup>**

	Are shares of non-residents in local corp. subject to tax?	Is tax claimed on stock of foreign corp. owning prop. in state?
Alabama.....	No	No
Arizona.....	No	No
Arkansas.....	Yes	*
California†.....	Yes	*
Colorado†**.....	Yes	*
Connecticut†.....	Yes	No
Delaware.....	No	*
Florida.....	No	No
Georgia.....	No	No
Idaho†.....	No§	*
Illinois†.....	Yes	Yes
Indiana.....	No	No
Iowa†.....	Yes	Yes
Kansas†**.....	Yes	No
Kentucky†.....	Yes	Yes
Louisiana.....	Yes	*
Maine†¹.....	Yes	*
Maryland.....	No	No
Massachusetts†.....	Yes	No
Michigan†**.....	Yes	No
Minnesota†.....	Yes	No
Mississippi.....	No	No
Missouri†.....	Yes	Yes
Montana†.....	No†	Yes
Nebraska†.....	No§	*
Nevada.....	No	No
New Hampshire†**.....	Yes	Yes
New Jersey†.....	Yes	*
New Mexico.....	No	No



	Are shares of non-residents in local corp. subject to tax?	Is tax claimed on stock of foreign corp. owning prop. in state?
New York <sup>1</sup> .....	No	No
North Carolina† .....	Yes	*
North Dakota .....	No†	*
Ohio .....	No†	No
Oklahoma†** .....	Yes	*
Oregon† .....	No†	No
Pennsylvania† .....	No	No
Rhode Island .....	No	No
South Carolina .....	No	No
South Dakota† .....	No†	No
Tennessee† .....	No§	*
Texas .....	No†	*
Utah† .....	Yes	*
Vermont†** .....	Yes	Yes
Virginia .....	No	*
Washington† .....	Yes	Yes
West Virginia† .....	Yes	No
Wisconsin† .....	Yes	Yes
Wyoming† .....	No†	*

\* This question does not seem to have been raised or passed upon in the states marked with an asterisk.

† Under substantially similar laws, other states are taxing such stock. In the states so marked, however, no claim is made for such a tax, or else there is no effective method provided for collecting it.

§ In the states so marked it was apparently the opinion of their tax officials in 1910 that they were not entitled to collect such a tax, and we do not know that the law is now being construed differently. Their laws, however, are practically identical with the laws of states which claim this tax and moreover contain a provision for enforcing its collection.

‡ In states so marked a corporation transferring stock or delivering securities is held responsible itself, if the inheritance tax has not been paid.

\*\* These states also tax registered bonds of local corporations owned by non-residents.

<sup>1</sup> The New York courts have laid down the rule that the location of the property of the corporation cannot be the basis for jurisdiction to tax succession in its stock. *In re Palmer*, 183 N. Y. 238, 241, 76 N. E. 16, affirming 102 N. Y. App. Div. 616, 92 N. Y. Suppl. 1137.

<sup>2</sup> Maine does not tax stock owned by non-residents in Maine corporations which have less than \$1,000 of property in the state of Maine.

<sup>3</sup> New York classifies personal property as "tangible" or "intangible."

## LIST OF CORPORATIONS.

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The following is a list of the more important corporations whose securities are listed on the various stock exchanges, showing the state or states in which they are incorporated. Those marked with an asterisk (\*) are not corporations, but joint stock companies or voluntary associations.

Name of Company.	State where incorp. or organized.
Adams Express Co. ....	N. Y.*
Adventure Consolidated Copper Co. ....	Mich.
Algolah Mining Co. ....	Mich.
Allis-Chalmers Co. ....	N. J.
Allouez Mining Co. ....	Mich.
Amalgamated Copper Co. ....	N. J.
American Agricultural Chemical Co. (The) ....	Conn.
American Beet Sugar Co. ....	N. J.
American Brake Shoe & Foundry Co. ....	N. J.
American Can Co. ....	N. J.
American Car & Foundry Co. ....	N. J.
American Cotton Oil Co. (The) ....	N. J.
American Express Co. ....	N. Y.*
American Hide & Leather Co. ....	N. J.
American Ice Securities Co. ....	N. J.
American Light & Traction Co. ....	N. J.
American Linseed Co. ....	N. J.
American Locomotive Co. ....	N. Y.
American Malt Corp. ....	N. J.
American Pneumatic Service Co. ....	Del.
American Radiator Co. ....	N. J.
American Sewer Pipe Co. ....	N. J.
American Shipbuilding Co. ....	N. J.
American Smelters Securities Co. ....	N. J.
American Smelting & Refining Co. ....	N. J.
American Snuff Co. ....	N. J.
American Steel Foundries Co. ....	N. J.
American Sugar Refining Co. (The) ....	N. J.

American Telephone & Telegraph Co. ....	N. Y.
American Tobacco Co. (The) .....	N. J.
American Type Founders Co. ....	N. J.
American Woolen Co. ....	N. J.
American Writing Paper Co. ....	N. J.
American Zinc, Lead & Smelting Co. ....	Me.
Amoskeag Manufacturing Co. ....	N. H.
Anaconda Copper Mining Co. ....	Mont.
Ann Arbor Railroad Co. ....	Mich.
Arizona Commercial Copper Co. ....	Me.
Arnold Mining Co. ....	Mich.
Associated Merchants Co. ....	Conn.
Associated Oil Co. ....	Cal.
Atchison, Topeka & Santa Fe Railway Co. (The) ....	Kan.
Atlantic Coast Line Railroad Co. ....	Va.
Atlantic, Gulf & West Indies Steamship Lines ....	Me.
Atlantic Mining Co. ....	Mich.
Baltimore & Ohio Railroad Co. (The) .....	Md., Va.
Batopilas Mining Co. (The) ....	N. Y.
Bethlehem Steel Corp. ....	N. J.
Bonanza Development Co. ....	Colo.
Boston & Albany Railroad Co. ....	Mass., N. Y.
Boston & Corbin Copper & Silver Mining Co. ....	Me.
Boston & Lowell Railroad Co. ....	Mass.
Boston & Maine Railroad Co. ....	Mass., N. H., Me.
Boston & Northern Street Railway Co. ....	Mass.
Boston & Providence Railroad Corp. ....	Mass.
Boston Elevated Railway Co. ....	Mass.
Boston, Revere Beach & Lynn Railroad Co. ....	Mass.
Brill (J. G.) Co. (The) .....	Pa.
Brooklyn Rapid Transit Co. ....	N. Y.
Brooklyn Union Gas. Co. (The) ....	N. Y.
Buffalo, Rochester & Pittsburgh Railway Co. ....	N. Y., Pa.
Butte-Ballaklava Copper Co. ....	Ariz.
Butte Coalition Mining Co. ....	N. J.
Butterick Co. (The) ....	N. Y.
Calumet & Arizona Mining Co. ....	Ariz.
Calumet & Hecla Mining Co. ....	Mich.
Cambria Steel Co. ....	Pa.
Canada Southern Railway Co. ....	Dom. of Canada
Canadian Pacific Railway Co. ....	Dom. of Canada

Capital Traction Co. (The) .....	Dist. of Columbia
Centennial Copper Mining Co. ....	Mich.
Central Coal & Coke Co. ....	Mo.
Central of Georgia Railway Co. ....	Ga.
Central Leather Co. ....	N. J.
Central Pacific Railway Co. ....	Utah
Central Railroad of New Jersey .....	N. J.
Central & South American Telegraph Co. ....	N. Y.
Central Vermont Railway Co. ....	Vt.
Chesapeake & Ohio Railway Co. (The) .....	Va.
Chicago & Alton Railroad Co. ....	Ill.
Chicago & Eastern Illinois Railroad Co. ....	Ill.
Chicago & Northwestern Railway Co. ....	Ill., Wis., Mich.
Chicago, Burlington & Quincy Railroad Co. ....	Ill.
Chicago Great Western Railroad Co. ....	Ill.
Chicago Junction Railways & Union Stock Yards Co. (The) .....	N. J.
Chicago, Milwaukee & St. Paul Railway Co. ....	Wis.
Chicago Pneumatic Tool Co. ....	N. J.
Chicago Railways Co. ....	Ill.
Chicago, St. Paul, Minneapolis & Omaha Railway Co. ....	Wis.
Chicago Subway Co. ....	N. J.
Chicago Telephone Co. ....	Ill.
Cincinnati, Hamilton & Dayton Railway Co. (The) ..	Ohio
Cleveland, Cincinnati, Chicago & St. Louis Railway Co. .....	Ohio & Ind.
Colorado Fuel & Iron Co. (The) .....	Colo.
Colorado & Southern Railway Co. (The) .....	Colo.
Columbus & Hocking Coal & Iron Co. ....	Ohio
Commonwealth Edison Co. ....	Ill.
Concord & Montreal Railroad Co. (B. & M.) .....	N. H.
Connecticut & Passumpsic Rivers Railroad Co. (B. & M.) .....	Vt.
Connecticut River Railroad Co. (B. & M.) .....	Mass., N. H.
Consolidated Gas Co. ....	N. Y.
Consolidated Mercur Gold Mines Co. ....	N. J.
Consolidation Coal Co. (The) .....	Md.
Copper Range Consolidated Co. ....	N. J.
Corn Products Refining Co. ....	N. J.
Cramp & Sons Ship & Engine Building Co. (The Wm.) ..	Pa.
Crex Carpet Co. ....	Del.

Crucible Steel Co. of America .....	N. J.
Cuban-American Sugar Co. (The) .....	N. J.
Cumberland Telephone & Telegraph Co. ....	Ky.
Daly West Mining Co. ....	Col.
Delaware & Hudson Co. (The) .....	N. Y.
Delaware, Lackawanna & Western Railroad Co. (The) .	Pa.
Denver & Rio Grande Railroad Co. ....	Col. & Utah
Detroit United Railway Co. ....	Mich.
Diamond Match Co. (The) .....	Ill.
Distillers Securities Corp. ....	N. J.
Dominion Coal Cos., Ltd. ....	Nova Scotia
Dominion Iron & Steel Co., Ltd. ....	Nova Scotia
Draper Co. ....	Me.
Duluth, South Shore & Atlantic Railway Co. ....	Mich., Wis.
Duluth-Superior Traction Co. (The) .....	Conn.
Du Pont (E. I.) De Nemours Powder Co. ....	N. J.
East Boston Co. ....	Mass.
East Butte Copper Mining Co. (The) .....	Ariz.
Eastern Steamship Co. ....	Me.
Eastman Kodak Co. ....	N. J.
Edison Electric Illuminating Co. (The) .....	Mass.
Electric Storage Battery Co. (The) .....	N. J.
Elgin National Watch Co. ....	Ill.
Erie Railroad Co. ....	N. Y.
Federal Mining & Smelting Co. ....	Del.
Fitchburg Railroad Co. ....	Mass., N. H., Vt. & N. Y.
Franklin Mining Co. ....	Mich.
Galveston-Houston Electric Co. ....	Me.
General Asphalt Co. ....	N. J.
General Chemical Co. ....	N. Y.
General Electric Co. ....	N. Y.
General Motors Co. ....	N. J.
Giroux Consolidated Mines Co. ....	Del.
Goldfield Consolidated Mines Co. (The) .....	Wyo
Granby Consolidated Mining, Smelting & Power Co., Ltd. (The) .....	Brit. Col.
Great Northern Iron Ore Properties .....	Minn.*
Great Northern Railway Co. ....	Minn.
Greene Cananea Copper Co. ....	Minn.
Hancock Consolidated Mining Co. ....	Mich.
Havana Electric Railway Co. ....	N. J.

Helvetia Copper Co. (The).....	Ariz.
Hocking Valley Railway Co.(The).....	Ohio
Illinois Brick Co. ....	Ill.
Illinois Central Railroad Co. ....	Ill.
Independent Brewing Co.....	Pa.
Indiana Mining Co. ....	Mich.
Ingersoll-Rand Co. ....	N. J.
Inspiration Copper Co. ....	Me.
Interborough-Metropolitan Co.....	N. Y.
Interborough Rapid Transit Co. ....	N. Y.
International & Great Northern Railroad Co. ....	Texas
International Buttonhole Machine Co. ....	Me.
International Harvester Co. ....	N. J.
International Mercantile Marine Co. ....	N. J.
International Nickel Co. ....	N. J.
International Paper Co. ....	N. Y.
International Power Co. ....	N. J.
International Smelting & Refining Co. ....	N. J.
International Steam Pump Co. ....	N. J.
Iowa Central Railway Co. ....	Ill.
Island Creek Coal Co. ....	Me.
Isle Royale Copper Co. ....	N. J.
Kansas City, Fort Scott & Memphis Railway Co. (The)	Kan.
Kansas City, Mexico & Orient Railway Co. (The) ....	Kan.
Kansas City Railway & Light Co. ....	N. J.
Kansas City Southern Railway Co. (The) ....	Mo.
Kerr Lake Mining Co.....	N. Y.
Keweenaw Copper Co. ....	Mich.
Lackawanna Steel Co. ....	N. Y.
Laclede Gas Light Co. (The) ....	Mo.
Lake Copper Co. ....	Mich.
Lake Erie & Western Railroad Co. ....	Ill.
Lake Shore & Mich. Southern Railway Co.	
	Ill., Ohio, Mich., Ind., Pa., N. Y.
Lake Superior Corp. (The) ....	N. J.
La Salle Copper Co.....	Mich.
Lehigh Coal & Navigation Co. (The) ....	Pa.
Lehigh Valley Railroad Co. ....	Pa.
Long Island Railroad Co. (The) ....	N. Y.
Louisville & Nashville Railroad Co. ....	Ky.
Mackay Companies (The) ....	Mass.*

Maine Central Railroad Co. ....	Me.
Manhattan Railway Co. ....	N. Y.
Manufacturers Light & Heat Co. (The).....	Pa.
Mass. Consolidated Mining Co. (The) .....	Mich.
Massachusetts Electric Companies .....	Mass.*
Massachusetts Gas Companies .....	Mass.*
Mayflower Mining Co. ....	Mich.
Mergenthaler Linotype Co. ....	N. Y.
Metropolitan West Side Elevated Railway Co. (The) ..	Ill.
Mexican Light & Power Co., Ltd. (The) .....	Dom. of Canada
Mexican Telephone & Telegraph Co. ....	Me.
Mexico Consolidated Mining & Smelting Co. ....	Me.
Miami Copper Co. ....	Del.
Michigan Central Railroad Co. ....	Mich.
Michigan Copper Mining Co. ....	Mich.
Michigan State Telephone Co.....	Mich.
Minneapolis & St. Louis Railroad Co. ....	Minn., Ia.
Minneapolis General Electric Co. (The) .....	N. J.
Minneapolis, St. Paul & Sault Ste. Marie Railway Co.	Minn., Wis. & Mich.
Missouri, Kansas & Texas Railway Co. ....	Kan.
Missouri Pacific Railway Co. (The).....	Mo., Kan., Neb.
Mohawk Mining Co. ....	Mich.
Montreal Light, Heat & Power Co. (The) .....	Quebec
Montreal Street Railway Co. ....	Quebec
Nashville, Chattanooga & St. Louis Railway Co. ....	Tenn.
National Biscuit Co. ....	N. J.
National Carbon Co. ....	N. J.
National Enameling & Stamping Co. ....	N. J.
National Fire Proofing Co. ....	Pa.
National Lead Co. ....	N. J.
National Railways of Mexico .....	Mex.
Nevada Consolidated Copper Co. ....	Me.
New Arcadian Copper Co. ....	Mich.
New England Cotton Yarn Co. (The) .....	Mass.
New England Telephone & Telegraph Co. ....	N. Y.
New York Air Brake Co. (The).....	N. J.
New York Central & Hudson River Railroad Co. ....	N. Y.
New York, Chicago & St. Louis Railroad Co. (The)	N. Y., Ohio, Ind., Pa.
New York Dock Co. ....	N. Y.

New York, New Haven & Hartford Railroad Co.	Conn., Mass., R. I.
New York, Ontario & Western Railway Co. ....	N. Y.
New York, Susquehanna & Western Railroad Co. ....	N. J., Pa.
Nipissing Mines Co. ....	Me.
Norfolk & Western Railway Co. ....	Va.
North American Co. (The) ....	N. J.
North Butte Mining Co. ....	Minn.
North Lake Mining Co. ....	Mich.
Northern Central Railway Co. (The) ....	Pa., Md.
Northern Ohio Traction & Light Co. ....	Ohio
Northern Pacific Railway Co. ....	Wis.
Northern Securities Co. ....	N. J.
Northern Texas Electric Co. ....	Me.
Ojibway Mining Co. ....	Mich.
Old Colony Copper Co. ....	Mich.
Old Colony Railroad Co. ....	Mass.
Old Dominion Copper Mining & Smelting Co. ....	Me.
Osceola Consolidated Mining Co. ....	Mich.
Otis Elevator Co. ....	N. J.
Pacific Coast Co. (The) ....	N. J.
Pacific Mail Steamship Co. ....	N. Y.
Pacific Telephone & Telegraph Co. (The) ....	Cal.
Parrot Silver & Copper Co. ....	Mont.
Pennsylvania Railroad Co. (The) ....	Pa.
Pennsylvania Steel Co. ....	N. J.
People's Gas Light & Coke Co. ....	Ill.
Peoria & Eastern Railway Co. ....	Ill.
Pere Marquette Railroad Co. ....	Mich., Ind.
Philadelphia Co. ....	Pa.
Philadelphia Electric Co. ....	N. J.
Philadelphia Rapid Transit Co. ....	Pa.
Pittsburgh Brewing Co. ....	Pa.
Pittsburgh, Cincinnati, Chicago & St. Louis Railway Co. (The) ....	Pa., W. Va., Ohio, Ind., Ill.
Pittsburgh Coal Co. ....	N. J.
Pittsburgh, Fort Wayne & Chicago Railway Co. Ohio, Ind., Ill. & Pa.	
Pittsburgh Plate Glass Co. ....	Pa.
Pressed Steel Car Co. ....	N. J.
Pullman Co. (The) ....	Ill.
Quicksilver Mining Co. ....	N. Y.



Quincy Mining Co. ....	Mich.
Railway Steel-Spring Co. ....	N. J.
Ray Consolidated Copper Co. ....	Me.
Reading Co. ....	Pa.
Reece Button-Hole Machine Co. ....	Me.
Reece Folding Machine Co. ....	Me.
Republic Iron & Steel Co. ....	N. J.
Rock Island Co. (The) ....	N. J.
Rotary Ring Spinning Co. ....	Del.
Rutland Railroad Co. ....	Vt., N. Y.
St. Joseph & Grand Island Railway Co. (The) ....	Kan., Neb.
St. Louis & San Francisco Railroad Co. ....	Mo.
St. Louis Southwestern Railway Co. ....	Mo.
St. Mary's Mineral Land Co. ....	N. J.
San Pedro, Los Angeles & Salt Lake Railroad Co. ....	Utah
Santa Fe Gold & Copper Mining Co. ....	N. J.
Sao Paulo Tramway Light & Power Co., Ltd. (The) ..	Ont.
Savannah Electric Co. ....	Ga.
Sears, Roebuck & Co. ....	N. Y.
Shannon Copper Co. ....	Del.
Shattuck Arizona Copper Co. ....	Minn.
Sloss Sheffield Steel & Iron Co. ....	N. J.
South Utah Mines & Smelters ....	Me.
Southern Pacific Co. ....	Ky.
Southern Railway Co. ....	Va.
Standard Oil Co. ....	N. J.
Superior & Boston Copper Co. ....	Ariz.
Superior & Pittsburgh Copper Co. ....	Minn.
Superior Copper Co. ....	Mich.
Swift & Co. ....	Ill.
Tamarack Mining Co. ....	Mich.
Tennessee Coal, Iron & Railroad Co. ....	Tenn.
Tennessee Copper Co. ....	N. J.
Texas Co. (The) ....	Texas
Texas & Pacific Railway Co. (The) ....	U. S.
Texas Pacific Land Trust ....	Texas*
Third Avenue Railroad Co. (The) ....	N. Y.
Toledo Railways & Light Co. ....	Ohio
Toledo, St. Louis & Western Railroad Co. ....	Ind.
Tonopah Mining Co., Nevada (The) ....	Del.
Torrington Co. ....	Me.

Twin City Rapid Transit Co. ....	N. J.
Union Bag & Paper Co. (The) .....	N. J.
Union Pacific Railroad Co. ....	Utah
Union Traction Co. (Phila.) .....	Pa.
United Boxboard Co. ....	N. J.
United Cigar Manufacturers' Co. ....	N. Y.
United Dry Goods Companies .....	Del.
United Fruit Co. ....	N. J.
United Gas Improvement Co. (The) .....	Pa.
United Railways Investment Co. ....	N. J.
United Shoe Machinery Corp. ....	N. J.
United States Cast Iron Pipe & Foundry Co. ....	N. J.
United States Express Co. ....	N. Y.*
United States Realty & Improvement Co. ....	N. J.
United States Reduction & Refining Co. ....	N. J.
United States Rubber Co. ....	N. J.
United States Smelting Refining & Mining Co. ....	Me.
United States Steel Corp. ....	N. J.
Utah-Apex Mining Co. ....	Me.
Utah Consolidated Mining Co. ....	N. J.
Utah Copper Co. ....	N. J.
Vandalia Railroad Co. ....	Ind., Ill.
Victoria Copper Mining Co. ....	Mich.
Virginia-Carolina Chemical Co. ....	N. J.
Virginia Iron, Coal & Coke Co. ....	Va.
Virginian Railway Co. ....	Va.
Wabash Pittsburgh Terminal Railway Co. (The) . .	Pa., Ohio, W. Va.
Wabash Railroad Co. ....	Ill., Ind., Mich., Mo., Ohio
Wells Fargo & Co. ....	Col.
West End Street Railway Co. ....	Mass.
Western Electric Co. ....	Ill.
Western Maryland Railroad Co. ....	Md.
Western New York & Pennsylvania Railway Co. ....	Pa., N. Y.
Western Telephone & Telegraph Co. ....	N. J.
Western Union Telegraph Co. ....	N. Y.
Westinghouse Electric & Manufacturing Co. ....	Pa.
Wheeling & Lake Erie Railroad Co. ....	Ohio
Winona Copper Co. ....	Mich.
Wisconsin Central Railway Co. ....	Wis.
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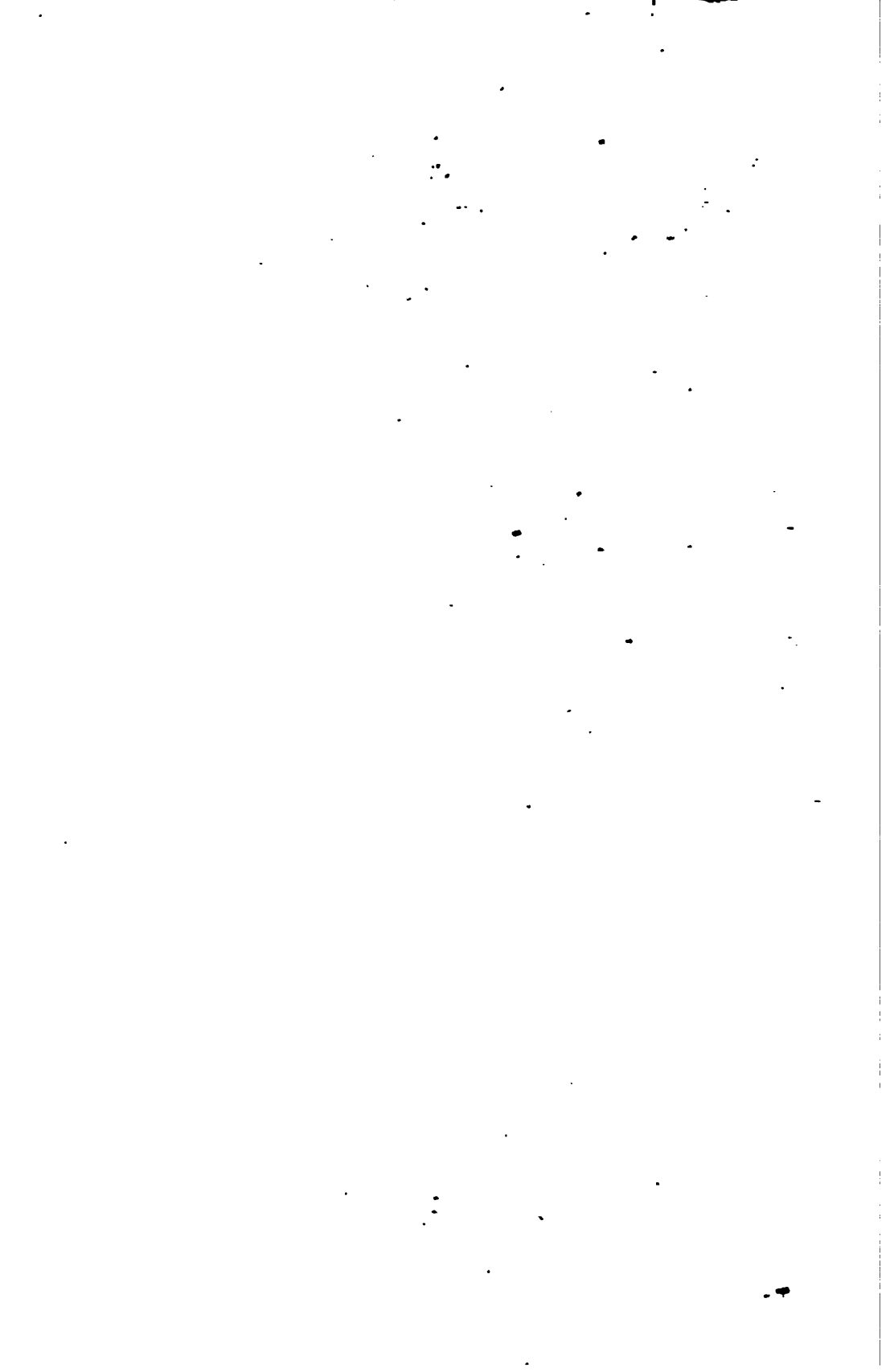
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